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Unfree Labor and American Capitalism
From Slavery to the Neoliberal-Penal State

David Tisel

Honors Thesis in Comparative Politics

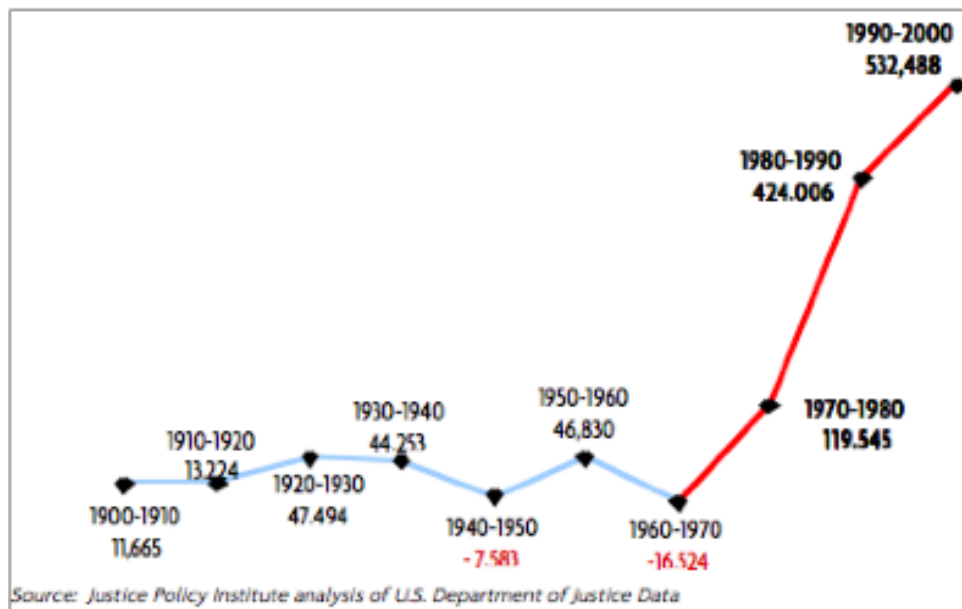
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2013

Abstract: From Marx to Friedman, most theorists of capitalism claim that capitalist development promotes free labor and diminishes the productive use of “pre-capitalist” forms of *unfree labor* such as slavery or serfdom. Such theories have trouble explaining both the persistence of different types of unfree labor throughout the capitalist era of American history and the resurgence of prison labor in the contemporary neoliberal period. Applying works by O’Connor and Habermas, this paper argues that the American history of unfree labor under capitalism has been shaped by the “contradiction” between private, concentrated capital accumulation and generalized public legitimation of the capitalist state. Both slavery in the antebellum south and convict leasing in the postbellum south were examples of accumulation by unfree labor. Then, under Fordism, unfree labor declined as Marx would expect. However, in the neoliberal period, unfree labor returns in the form of prison labor under racialized institutions of mass incarceration; the racial disproportionality of U.S. prisons are heir to past racializing institutions such as slavery and Jim Crow. However, contemporary prison labor differs from past examples of unfree labor in that today it is generally unproductive materially, but it persists because political elites use it as a legitimating spectacle that reinforces ideological-cultural values at the core of neoliberal capitalism: that everyone, especially the African American “underclass” *must work*. The ongoing insertion of capitalist institutions into U.S. prisons through prison labor and privatization are the results of ideological attempts to reconcile contradictory elements of the neoliberal-penal state: the ideology of free markets and limited government conflicts with the “big government,” coercive reality of mass incarceration, and the cost of maintaining the massive carceral apparatus conflicts with the neoliberal obsession with governmental and economic “efficiency.” The neoliberal-penal state holds together, both materially and discursively, through the blending of markets and extra-economic discipline; hence the return of unfree labor, despite predictions of its demise.

In 1985, Ronald Reagan proclaimed in his second inaugural address: “We will not rest until every American enjoys the fullness of freedom, dignity, and opportunity as our birthright.” This was halfway through the decade that witnessed the greatest increase in incarceration rates in American history, thanks largely to the Reagan Administration’s escalation of the War on Drugs.

Net Changes in Prison Population, 1900-2000



Reagan’s invocation of “freedom” as the philosophical basis of his politics, combined with the explosion of the carceral state under his presidency, opens up the question of what exactly he meant when he said “freedom:” what is Reagan’s freedom, and who does it belong to? Clearly, Reagan’s freedom is not political freedom for the hundreds of thousands of African Americans incarcerated for minor drug offenses. Rather, Reagan’s freedom is economic freedom, represented by the loosening of governmental regulation and other barriers to capital accumulation called neoliberalism. Perhaps Reagan’s most enduring political legacy is that today, in American political discourse, “freedom” has become a rhetorical symbol for “liberal capitalism;” politicians speak of “the free market” or “free enterprise” rather than “capitalism.”

On the other side of the political spectrum from Ronald Reagan, radical critics of mass

incarceration and neoliberalism have called the system “slavery,” invoking the memory of America’s most infamous institution of bondage to expose the inherent unfreedoms of contemporary American society. Scholars such as Michelle Alexander and Loic Wacquant take a slightly more nuanced perspective. Alexander argues, “Jim Crow and Slavery were caste systems. So is our current system of mass incarceration.”¹ And Wacquant writes, “Slavery and mass imprisonment are genealogically linked and one cannot understand the latter—its timing, composition, and smooth onset as well as the quiet ignorance or acceptance of its deleterious effects on those it affects—without returning to the former as historic starting point and functional analogue.”²

The tempting comparison between slavery and mass incarceration is both illuminating and problematic. It is illuminating for reasons such as those provided by Wacquant and Alexander: since both were “caste systems” of racial domination, understanding the history of American slavery is useful in understanding mass incarceration. But the analogy is problematic because slavery and mass incarceration are fundamentally different kinds of caste systems: the first is chiefly a system of *exploitation*, the latter a system of *oppression*. Erik Olin Wright’s distinction between oppression and exploitation is pertinent:

In nonexploitative economic oppression there is no transfer of the fruits of labor from the oppressed to the oppressor; the welfare of the oppressor depends simply on the exclusion of the oppressed from access to certain resources, but not on their laboring effort...The crucial difference between exploitation and nonexploitative economic oppression is that, in an exploitative relation, the exploiter *needs* the exploited since the exploiter depends upon the effort of the exploited.”³

In Wright’s categorization, exploitation and oppression are conceptually distinct: exploitation is a relationship of mutual need and one-sided material gain, and oppression is a relationship of

¹ Alexander, Michelle. *The New Jim Crow*. The New Press, 2002. P12

² Wacquant, Loic. “From Slavery to Mass Incarceration.” *New Left Review*, 13. 2002. P41-42.

³ Wright, Erik. *Class Counts*. Cambridge University Press, 2000. P10-11.

one-sided material gain without mutual need. Slavery was clearly exploitative because slave owners reaped economic benefits from exploiting their slaves' labor. On the other hand, in most cases, the extent to which anyone directly benefits economically from mass incarceration is less clear.⁴

One caveat to Wright's neat distinction between exploitation and oppression is that historically, the line between the two can be blurry. The experience of many African Americans throughout American history--and in the contemporary neoliberal-penal state--is at some points "oppression," at some points "exploitation," and at some points exploitation aided by structures of oppression. It is the last of these that constitutes *unfree labor*: across American history, structures of racial oppression have created the institutional context for coerced labor.

By most accounts, unfree labor is not supposed to exist under capitalism. A central component of the supposed connection between capitalism and freedom is the picture of labor as unforced and available in a free labor market. Across the political spectrum, from conservative and libertarian discourse to revolutionary Marxist discourse, theorists maintain that capitalist development produces free labor markets as substitutes for earlier forms of unfree or coerced labor, such as slavery or serfdom. The argument is simple: free labor is more productive than unfree labor since free laborers own their labor power,⁵ and in a competitive capitalist setting, productive labor is more competitive than unproductive labor; thus free labor will crowd out unfree labor under competitive capitalism.

Milton Friedman extends the connection between capitalism and freedom even further,

⁴ Later sections will explore prison profiteering from the case of privately run prison facilities to the case of prison labor. Based on the generally low profits from exploiting prison labor, I argue that capital accumulation is less of a motivating factor in prison labor than it was in slavery, and that the role of prison labor in neoliberal capitalism is more about legitimating the neoliberal-penal state.

⁵ Neoclassical theory predicts that a worker who owns their labor power has an incentive to invest in increases in their labor productivity, such as through education. For Marx, the agents in productivity increases are capitalists, but the free laborer's ownership of his own labor power is still the determining factor in why free labor is more productive than unfree labor.

arguing, “History suggests only that capitalism is a necessary condition for political freedom.”⁶

Although Friedman later accedes that capitalism does not *guarantee* political freedom, he maintains that capitalism is a precondition for it, arguing that “free” markets constitute the only economic system free of structural coercion.

So long as effective freedom of exchange is maintained, the central feature of the market organization of economic activity is that it prevents one person from interfering with another in respect of most of his activities. The consumer is protected from coercion by the seller because of the presence of other sellers with whom he can deal. The seller is protected from coercion by the consumer because of other consumers to whom he can sell. The employee is protected from coercion by the employer because of other employers for whom he can work, and so on. And the market does this impersonally and without centralized authority [...] By removing the organization of economic activity from the control of political authority, the market eliminates this source of coercive power. It enables economic strength to be a check to political power rather than a reinforcement.⁷

According to Friedman, the presence of impersonal choice protects market participants from coercion. This extends to labor markets: employees are supposedly protected from coercion because they could leave their jobs and work for other employers. If Friedman’s theory holds true, one would expect that the development of capitalism would lead to a greater number of choices for people as consumers, producers, and workers, and that the increase in choices would imply an increase in people’s *freedom*, since people could *choose* to exit coercive economic relationships.⁸

As a libertarian, Friedman has come out strongly against mass incarceration. In an interview, he said, “Every friend of freedom must be as revolted as I am by the prospect of turning the United States into an armed camp, by the vision of jails filled with casual drug users and of an army of enforcers empowered to invade the liberty of citizens on slight evidence.” Yet for Friedman, the presence of mass incarceration and liberal capitalism in America is like having a fruit bowl with an apple and an orange: they exist together, but they have little effect on one another. In

⁶ Friedman, Milton. Capitalism and Freedom. University of Chicago Press. 2002. P2.

⁷ Friedman 5

⁸ This is a slightly different argument about why unfree labor would diminish under capitalism than Marx’s. Rather than stressing the productivity gains associated with producers switching to free labor, Friedman focuses on the freeing properties of choice for the worker.

this paper, I will argue the opposite: that systems of punishment in American history have interacted, both materially and discursively, with systems of capital accumulation and legitimation of the capitalist state.

Against the grain of theorists across the political spectrum, I argue that the persistence of different forms unfree labor is not an anomaly or even an accident in capitalism; rather, from slavery in the antebellum South to the spectacle of prison labor today, unfree labor has been a critical component of legitimation and accumulation throughout the history of American capitalism. Reading American history in this way helps explain what Marx and Friedman would find anomalous: the return of unfree labor under neoliberal capitalism, in the form of increasingly privatized prison labor. To explain this “anomaly,” I develop a sketch of the *neoliberal-penal state*, arguing that complementarities between the carceral state and the neoliberal capitalist state stabilize contradictions of late capitalism. In the balance is a challenge to the ideological connection between capitalism and freedom espoused by Friedman and Reagan.

Theory: Unfree Labor, Race, and Capitalism

Beyond the Binary of Slavery and Free Labor: Theorizing Unfree Labor

Theorizing Free Labor: Neoclassical Economics to Marx

In its simplest form, neoclassical labor market theory makes a few important assumptions about labor: 1) workers, and potential workers, can freely enter into and out of contracts for labor (i.e. there are no costs of entry or exit) 2) labor is perfectly commodifiable and quantifiable, and there exists such a thing as “one unit of labor” 3) there are no power differentials between employer and employee that distort the “natural” workings of the labor market. A stock neoclassical economist would probably assert that neoclassical models *could* take into account various exceptions to these assumptions. While this may be true, it is also true that most of the policy prescriptions that come out of the neoclassical economic discourse take for granted the three freedoms listed above.⁹

Based on these and other less-remarkable assumptions, neoclassical economics offers the theory of the *labor market*, that the supply and demand for labor will determine the number of workers and the wage rate. In this metaphor, the worker is the seller and the employer is the buyer, and the buyers and sellers interact in a free manner much like what one would encounter at a farmers’ market or stock exchange. This is the model for industrial relations that Milton Friedman assumes when he writes that “the employee is protected from coercion by the employer because of other employers for whom he can work.”¹⁰ In a perfect market, this is may be true; however, in the more realistic scenario where power relationships distort labor markets, the metaphor of the “labor market” breaks down.

⁹ For instance, the assertion that market liberalization will make everyone better off is based on these and other assumptions about how markets and people work.

¹⁰ Friedman 5

Like classical and neoclassical economists, Marx was also chiefly concerned with free labor in understanding the workings of capitalism.¹¹ For Marx, “free labor” in capitalism means an absence of political coercion, but the presence of economic coercion to work:

This worker must be free in the double sense that as a free individual he can dispose of his labour-power as his own commodity, and that, on the other hand, he has no other commodity for sale, ie he is rid of them, he is free of all the objects needed for the realisation of his labour-power.”¹²

In other words, even though “free laborers” are free to choose where they work in capitalism, they are not truly free to decide *whether* they work, since the material conditions of capitalism force them to work.

Marx theorized that the development of capitalism would substitute free labor for past forms of unfree labor such as serfdom or slavery: “In one word, for exploitation, veiled by religious and political illusions, it [the bourgeoisie, or capitalism] has substituted naked, shameless, direct, brutal exploitation.”¹³ For Marx, this substitution of free labor for unfree labor is part of the inexorable tide of capitalism, since free labor is inherently more productive than unfree labor.¹⁴ Because of this, Marx predicts that free labor will eclipse unfree labor once capitalism is well developed.

Classical and neo-classical economists generally agree on this point. Neoclassical theory posits that the incentives faced by a free laborer make him work harder, and the incentives faced by

¹¹ In “Capital,” Marx shows that, even in an ideal situation where workers are free to enter into and out of contracts without social coercion, there still remains a fundamental injustice at the heart of capitalism: “exploitation.” For Marx, exploitation is the system by which employers extract profits from the products of their workers’ toil. For instance, if a worker creates something that is worth \$5, and their wage for the day is \$3, the remaining \$2 that goes to the employer is called the *exploited surplus labor value*. (fn - in contrast to neoclassical economists, Marx wrote about “value” rather than “price.” Price is defined as the amount someone is willing to pay for something, but value connotes what the thing is “actually worth.”) The genius of “Capital” is that even free labor is exploited through this mechanism.

¹² Marx, *Capital* vol. 1, 272-3

¹³ Marx, *Communist Manifesto*, 17

¹⁴ For Marx, free labor is more productive because capitalists who are renting labor have an incentive to maximize the productivity of their workers (more so than lords or slave owners, who buy labor as a commodity in and of itself rather than rent it from free workers).

the unfree laborer make him work less hard (since free laborers presumably get paid more if they work harder, unlike slaves, for instance, who don't get paid). Because of this, neoclassical theory agrees with Marx that free labor is more productive than unfree labor, and that unfree labor will diminish in use under a free market system since it should lose in direct competition with free labor.

From Marxian to neoclassical economic theory, most theoretical works on the role of labor in capitalism focus on free labor, or labor in the absence of political coercion. Furthermore, despite their differences, both sides agree that unfree labor should diminish under capitalism, since free labor is inherently more productive than unfree labor, and that therefore free labor should beat unfree labor in a competitive market setting. The question then is, why has unfree labor persisted within American capitalism, and particularly, why has it returned (in the form of prison labor) under contemporary neoliberal capitalism? Before sketching a theoretical answer to this question, a more precise definition of unfree labor is necessary, which the next section provides.

Unfree Labor: Labor with Political Coercion

As ideal types, both Marxian and neoclassical visions of free labor exist in opposition to slavery. Free labor is 'free' because it is not slavery, and slavery's defining characteristic is that slaves are not free. The unfreedom of ideal-typical slavery has a few components, such as 1) slaves have no choice whether they work; 2) slaves have no choice where they work; 3) slaves have no control over what they do at work; 4) slaves have no representation or voice to bargain over working conditions; 5) slaves are not paid 6) the slave is the legal property (chattel) of the master; 7) the law (the state) enforces the legal subordination and property relation of the slave to the master. The combination of these characteristics is why slavery is the opposite of free labor, at least in an ideal-typical understanding of these terms.

But this binary obscures the forms of labor that exist between free labor and slavery. Some

types of labor are unfree in the sense that they exhibit a few of the characteristics listed above, but not all of them. For instance, most federal prisoners working at UNICOR today: 1) *do not* have a choice whether they work; 2) but they *do* have a choice where they work (they could do maintenance or other prison-specific work instead of working for UNICOR); 3) they often *do* have some choice in what they do at work; 4) they *do not* have representation or voice to bargain over working conditions, nor are they legally allowed to; 5) they *are* paid, but wages are usually extremely low and garnished to pay for prison expenses and things like child support or restitution; 6) convicts are *not* legally the property of any one person, although some say they are the property of the state, and 7) the law (the state) enforces the legal subordination of the *criminal* to the free person.

This example shows that unfree labor exists in the space between the ideal types of free labor and slavery. After analyzing the convict leasing system in the postbellum South, Lichtenstein writes, “The common experience of post-emancipation societies with coercive agrarian labor relations undermines the antimony of slave and free labor, and instead suggests the spectrum of labor relations in between.”¹⁵ Furthermore, the experience of African Americans throughout American history confirms that unfree labor has persisted in different forms--such as convict leasing, chain gang labor, and prison labor--in different eras ever since the abolition of slavery.

Robert Miles examines how unfree labor fits in to Marxian notions of labor and capitalism. He provides a definition of unfree labor that undergirds the historical analysis in this paper.

The concept of unfree wage labour refers specifically and primarily to the manner in which labour power is retained and exploited. It is therefore a concept which refers to economic relations, locating the characteristic of unfreedom in the means used to expropriate a surplus product. But the relations of production are not ‘purely economic.’ By definition, unfree wage labour is necessarily dependent on politico-legal intervention; hence the importance of regarding the state as a regulation of production. The state implements and regulates the

¹⁵ Lichtenstein, Alex. Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South. Verson, 1996. P5.

conditions of unfreedom which characterize the exploitation of labour power.¹⁶

So unfree labor under capitalism is labor with political coercion, as regulated or imposed by the state. The imposition of political coercion varies with the form of unfree labor. For instance, with chattel slavery, legal subordination of Africans was written into Southern states' laws, though in most cases, the enforcer of the political coercion was the slave master. In contemporary prison labor, however, the state both creates the inferior category (criminal) and enforces the coercive aspects of convict labor in prisons.

Miles also makes the distinction between unfree wage labor and unfree non-wage labor; contemporary prison labor is an example of the first, and chattel slavery is an example of the second. This is another example of how unfree labor forms form a continuum, in stark contrast to the ideal-typical “free labor”-“slavery” binary. Against the backdrop of this popular binary, it's important to note that the conditions of labor can be coercive even if waged.

Race, Racism, and Unfree Labor in America

In his exploration of unfree labor, Miles offers a definition of “racialization,” which situates race theory within Marxian materialism without limiting the explanatory power of race to the material.

I will use the concept *racialization* to refer to a process of signification in which human beings are categorized into ‘races’ by reference to real or imagined phenotypical or genetic differences. Processes of racialization, in which racism is a dominant ideological element, are not, in themselves, explained by the fact of capitalist development for that is to revert to functionalism. *But the process of racialization cannot be adequately understood without a conception of, and explanation for, the complex interplay of different modes of production and, in particular, of the social relations necessarily established in the course of material reproduction.*¹⁷

This theory of racializing institutions is the missing link that turns a simple explanatory conception

¹⁶ Miles, Robert. Anomaly or Necessity: Capitalism and Unfree Labor. Tavistock, 1987. P32-33.

¹⁷ Miles 7 (emphasis added)

of racial domination--i.e., racism exists, therefore oppression exists--into a dialectical one: racism both feeds, and is reproduced by, racializing institutions of unfree labor such as slavery and convict labor. This is the conceptual lens through which I will analyze the relationship between race and capitalist development in America.

This focus on the relationship between race and the structures of capitalism is not meant to suggest that race and racism are reducible to causation by capitalism. Racism is not merely “a function of capitalist development”--as Miles points out, that functionalist argument is overly deterministic in its depiction of a dynamic relationship. Rather, racism as a discourse has always been in a relationship with the changing structures of capitalism: the two can and do affect one another, even as they remain distinct.

In order to further explore this question of the relationship of race and capitalism--and the relationship of unfree labor and capitalism--a flexible but analytical model of capitalism is required. For the purposes of this paper, such a model must avoid “freedom” or “free labor” in its definition of capitalism. To this end, the next section develops a model based on accumulation and legitimation, focusing on the functional imperatives of capitalism rather than its defining features or surface attributes.

Defining Accumulation and Legitimation: O'Connor and Habermas

Drawing on Marx, James O'Connor describes the “first contradiction of capitalism:”

Our first premise is that the capitalistic state must try to fulfill two basic and often mutually contradictory functions--accumulation and legitimation. This means that the state must try to maintain or create the conditions in which profitable capital accumulation is possible. However, the state also must try to maintain or create the conditions for social harmony. A capitalist state that openly uses its coercive forces to help one class accumulate capital at the expense of other classes loses its legitimacy and hence undermines the basis of its loyalty and support. But a state that ignores the necessity of assisting the process of capital accumulation risks drying up the source of its own power, the economy's surplus

production capacity and the taxes from this surplus.¹⁸

It is debatable whether capital accumulation and state legitimation are “contradictory” in the common use of the word, since each depends on the other; without a legitimate state, capitalists would not be able to ensure stable accumulation due to security concerns, and without taxable capital accumulation, the state would lose its power, as O’Connor notes. However, O’Connor also portrays the tension between accumulation and legitimation: accumulation by the few, off the backs of the many, must be legitimated by the many.

This tension is best described by Habermas: “The crisis theorem is based now on the reflection that growing socialization of production still adjusted to private ends brings with it unfillable--because paradoxical--demands on the state apparatus.”¹⁹ The capitalist state is in a constant state of crisis because it must balance legitimation and accumulation. But what does that mean, and how does the state navigate this contradiction?

Accumulation is a straightforward concept. If capitalists are making sustained profits, then the state is fulfilling its role of assuring capital accumulation. The state assures this through three types of mechanisms: facilitating market exchange, engaging in market activity (buying things), and protecting the security of markets and capitalists. Firstly, the state facilitates market exchange by ensuring contracts, printing currency, and regulating markets (but not too much!). The state also engages in market activity by contracting with private companies for military operations, road construction, office chairs, and so forth. Finally, the state protects capitalist accumulation by literally protecting capitalists from potential danger through the use of the police and military. Weber’s definition of the state as the monopoly of the legitimate means of violence within a given territory can be applied to how the capitalist state defends accumulation by defending both the

¹⁸ O’Connor, James. The Fiscal Crisis of the State. St. Martin’s Press, 1973. P6.

¹⁹ Habermas, Jurgen. Legitimation Crisis. Beacon Press, 1973. P62.

bodies and wealth of capitalists.

Unlike accumulation, legitimation is a fuzzy and disputed term. Commonly, “legitimacy” is used to mean some measure of political support or acceptance: it means the opposite of revolt. But various scholars have defined legitimacy more specifically. For Habermas, “legitimations” consist of “interpretations, of narrative presentations or (for example in natural law) of systematized explanations and chains of argument, that have the double function of proving that the validity claims or norm systems are legitimate and of avoiding thematization and testing of discursive validity claims.”²⁰ So for Habermas, a “legitimation” is *not* a loud declaration of support for the status quo; the discursive workings or legitimation are subtler than that. For example, popular textbooks of microeconomics don’t say explicitly that unfettered capitalism is the only mode of social and economic organization that “works.” However, microeconomics, as a “systematized explanation” of human behavior, posits that people act rationally to maximize their own personal utility. This leads to the normative claim that markets are the most efficient (and therefore best) mode of social and economic organization, since in markets, individuals are free to buy and sell according to their own personal preferences, and thereby maximize their individual utilities. Microeconomics legitimates global capitalism subtly, through this systematized explanation of human behavior whose simple logic avoids “thematization and testing of discursive validity claims” because its conclusions are unavoidable within its logical construction that avoids self-reference. In sum, for Habermas, to legitimate means to construct or maintain cognitive frameworks or understandings of the world that conceal both the contestability of the status quo and the political nature of the frameworks’ construction.

This is similar to Marx’s theory of ideology as an idea that does not recognize the material and political basis of its existence. For Marx, ideologies are created by the material structure of

²⁰ Habermas 112-113

society, and they interact dynamically with that material structure. This model reminds us not to treat legitimation and accumulation as atomistic, but rather as in a dynamic relationship.

O'Connor's definition of legitimation is more materialist than Habermas's. For O'Connor, legitimations consist of state-sponsored programs, such as the welfare state safety-net, which mitigate the effects of private capital accumulation for the non-capitalists. Legitimation programs protect capital and the state from revolution by placating (or quarantining, as in the case of mass incarceration) those elements of society most disadvantaged by capitalism and thus most likely to revolt. Lenin had a similar conception of the legitimation roles of welfare programs and representative institutions such as labor unions and parliaments when he railed against social democracy.²¹

To summarize, legitimation has both discursive and material dimensions. Discursively, legitimations are conceptual frameworks that obscure the political nature of the status quo. Materially, legitimations are programs that prevent revolt by mitigating the inequalities produced by private capital accumulation. This complexity, tied with the common (mis)use of the term by many scholars of government as a proxy for "popularity" or "political capital," makes "legitimation" a potential deathtrap for analysis. Nevertheless, it remains an indispensable tool for understanding both the longevity and the crisis tendencies of capitalism, and as I will argue, the role of unfree labor in capitalism.

Theorizing the Relationship Between Unfree Labor and Capitalist Development in America

O'Connor's identification of the two pillars of the capitalist state--legitimation and accumulation--will provide the theoretical background for the historical analysis in this paper. The overarching analytical question is: how have different forms of unfree labor related to the balancing

²¹ Esp. in What is to Be Done, 1902.

of legitimation and accumulation in the American capitalist state throughout history? Proving that an institution of unfree labor contributed to capitalist accumulation is unproblematic: if people make profits from unfree labor, then that constitutes capital accumulation. Arguments about legitimation--especially in the discursive dimension--are less empirical, since legitimacy is not measurable in the same way as capitalist profits are. My claims about legitimation in this paper rely on discursive evidence, such as speeches and symbolism.

In terms of legitimation and accumulation, unfree labor has been entwined with American capitalism in various ways. During slavery in the South, unfree labor was the dominant mode of production in the south that articulated with free wage labor in the North to form a quasi-capitalist circuit of production. Later, in the postbellum South, sharecropping was a similarly central component of the regime of accumulation, and leased convict labor played a less central but still important role as it was often used to break strikes in extractive and manufacturing industries.²² This unfree convict labor contributed to capitalist accumulation in and of itself, and in a larger sense by weakening the power of labor unions in the early American South. Today, private companies still utilize prison labor to cut labor costs and to weaken the power of unions. Although private prison labor is a much smaller slice of the economy today than either slavery or convict leasing was in the South in the 1800s, it still contributes to capitalist accumulation, mostly indirectly by weakening labor.

The legitimation role of institutions of unfree labor is fuzzier but important. As racializing institutions, slave labor and convict labor have perpetuated racial inequality and racism as a political discourse. In the neoliberal period in particular, the legacy of the racial caste system has helped legitimate the explosion of incarceration of blacks.²³ Racism also codes the poor as

²² Lichtenstein

²³ Wacquant and also Alexander

unworthy, which legitimates inequality. And I will argue that contemporary prison labor is a spectacle that reinforces a political-cultural value central to neoliberal capitalism: that everyone must work.

Theorizing the Neoliberal-Penal State

A Sketch of the Neoliberal-Penal State

Since the core empirical case in this paper is the relationship between unfree labor in the contemporary carceral state and neoliberal capitalism, a theory “neoliberal-penal state” will prove essential. Political economists such as Harvey and Jessop have defined the neoliberal state,²⁴ and radical criminologists such as Parenti and Alexander have described the penal state.²⁵ However, few scholars have made the explicit theoretical connection between the neoliberal and penal arms of the state.²⁶ This section explores the state on the margin of penalty and accumulation, towards defining the *neoliberal-penal state*, using this example of the contemporary United States.

For capitalists, the Keynesian welfare state posed two accumulation problems: 1) it was expensive, and resources had to be diverted from capital investment to taxes to pay for the welfare state; and 2) it reduced the economic imperative for workers to work, especially in low-pay, low-skill labor markets. By combining mass incarceration with neoliberalism, and specifically through privatizing prisons and making inmates work, the neoliberal-penal state provides a legitimation substitute for the welfare state that sacrifices less in the way of capitalist accumulation, since 1) prison labor and prison privatization shift the costs of incarceration to the incarcerated, and 2) mass incarceration and the spectacle of prison labor impose labor discipline on the low-wage,

²⁴ Harvey, David A Brief History of Neoliberalism. Oxford University Press, 2005, and Jessop, Bob. The Future of the Capitalist State. Polity, 2003.

²⁵ Alexander, Michelle. The New Jim Crow. The New Press, 2002, and Parenti, Chritian. Lockdown America. Verso, 1999.

²⁶ Exceptions include Wacquant, Loic. Punishing the Poor. Duke university Press, 2012, and Harcourt, Bernard, The Illusion of Free Markets. Harvard University Press, 2012.

low-skill labor force outside of the prison.

The American neoliberal-penal state has four principal, material components: 1) neoliberal, “flexible” economic and employment policies; 2) criminal laws, such as drug policies, that create the condition of mass incarceration; 3) increasing privatization of prisons; 4) expanding use and privatization of prison labor. These material institutions do not exist in a vacuum. First, they exhibit functional cohesion with one another; second, they are the results of discursive changes; and third, as institutions, they have a role in shaping those political discourses.²⁷

Characteristic discourses of the neoliberal-penal state include: 1) limited government and free markets 2) personal responsibility and meritocracy 3) “tough on crime” 4) Racism, usually codified in subterfuges. Like the material components of the neoliberal-penal state, these discourses are complementary, even as they are sometimes contradictory. For example, the discourse on limited government is at odds with the “Tough on Crime” discourse, but the theoretical contradiction there doesn’t stop both of these discourses from shaping policy in the neoliberal-penal state. In fact, the combination of these two opposing discourses can help explain why private prisons and private prison labor have come into vogue: neoliberal discourse on limited government and free markets deals with the inefficiency of the results of “get tough on crime” (ie, mass incarceration) by privatizing prisons and shifting some of the costs of incarceration to the incarcerated through prison labor. The theoretical contradiction between limited government and “tough on crime” is resolved, at least on the surface, through these market-like reforms.

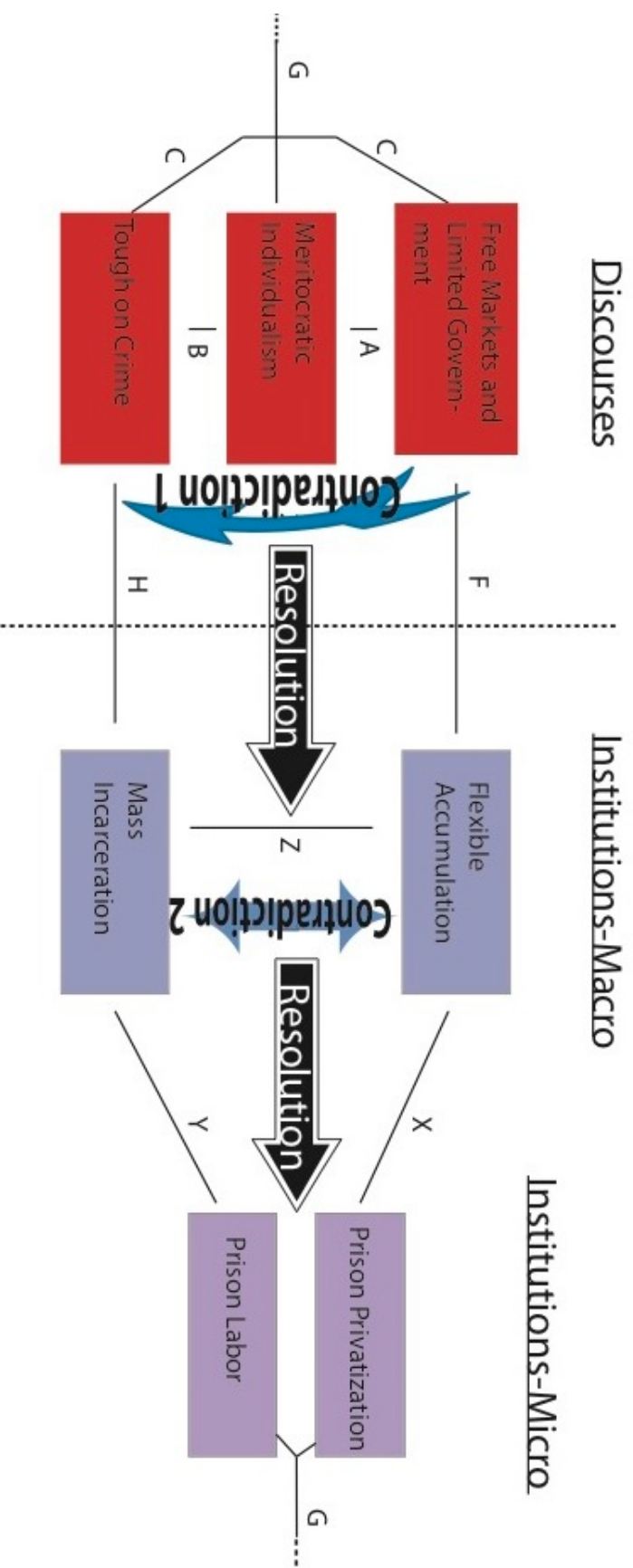
To typify the neoliberal-penal state, these relationships of two dimensions--between discourse and policy on one axis, and between neoliberalism and penalty on the other--have to be clarified and fleshed out. The diagram below, “Dialectics of the Neoliberal-Penal State,”

²⁷ The diagram, “Dialectics of the Neoliberal-Penal State,” and the corresponding discussion on the following pages will flesh this out.

summarizes relationships between ideal types. Complementary relationships are symbolized by arrows with letters, and the contradictory relationships with numbers. The rest of the section will explain the lettered and numbered relationships.

Dialectics of the Neoliberal-Penal State

Ideal-Typical Representation of Relationships between Discourses and Institutions



Relationships F, G, and H: Institutions and Discourses

This paper has multiple examples of how political discourse (or loosely, ideology) and material reality exist in a dynamic and dialectical relationship. Marx's concept of "ideology" is more specific than the common usage of the word. For Marx, an ideology is an idea or worldview embedded in the political-economic structure (and unaware of its material basis). The dialectical relationship of ideological and material reality is that material reality conditions ideological reality and vice versa: ideology defines material reality and makes it legible, and the material structure of society helps determine which political discourses become dominant ideologies.²⁸ The following three theses exemplify this relationship between institutions and discourses in this context of the neoliberal-penal state.

(F) Neoliberal discourse is the ideological reflection of globalized flexible accumulation

In terms of the American neoliberal state, globalization makes supply-side economic intervention more appropriate, and capital mobility results in corporations effectively bidding down countries in terms of taxes and labor regulations; in other words, globalization makes neoliberal discourse more popular and descriptive of reality. And neoliberal discourse creates the institutions of flexible accumulation through policies such as workfare that fracture working class power.²⁹

(H) Racializing institutions recreate racist discourse, and racism becomes codified in racist institutions

In terms of the American penal state, racism codified in Nixon, Reagan, Bush, and Clinton's "tough on crime" discourse was a political antecedent to the Drug War policies that

²⁸ Concept from Williams, Raymond. *The Country and the City*. Oxford University Press, 1975.

²⁹ The section, "Neoliberalism Flexible Accumulation" on page 55 will expand on this brief summary.

produced mass incarceration. Wacquant argues the other side of this dialectic relationship: that mass incarceration reproduces racism, calling it a *racializing institution* in the vein of slavery and Jim Crow.³⁰

(G) “Personal responsibility” means everyone must work; shirkers must be “taught” personal responsibility through unfree labor

The discourse on personal responsibility, individualism, and meritocracy legitimates and produces (via political elites who turn discourse into policy) contemporary prison labor programs.³¹ Inverted, the image of the toiling convict reinforces this discourse and serves as a lesson for those who would not accept the individual responsibility to sell labor power in the market.³²

A, B and C: Discursive Complementarities

In addition to interacting with material institutions, political discourses interact with other discourses. Some discourses contradict one another, and some discourses complement each other by creating a fuller, more consistent legitimation schema or cognitive framework. The following three are examples of the latter: discursive complementarities.

(A) Pro-market ideology relies on and produces meritocratic individualism

The idea that markets produce just outcomes is based on the assumption that individuals have fair chances in the labor market. Thus right-political conceptions of justice usually involve “equality of opportunity” rather than “equality of condition” among citizens. “Equality of opportunity” fits into the legitimation scheme (or cognitive framework) of pro-market ideology,

³⁰ The section, “The War on Drugs and Mass Incarceration” on page 56 will expand on this.

³¹ For example, see the section on the American Legislative Exchange Council (ALEC), page 69

³² For example, see the section on Joe Arpaio’s chain gangs on page 75.

since markets produce unequal outcomes, but markets also create the opportunity for some people to move up in the class structure. And right-political actors often use the discourse on opportunity, individualism, and merit to legitimate pro-market reforms.

(B) The punitive side of meritocratic individualism is “punish the shirkers”

Logically, if successful people are successful because they had merit in an equal-opportunity setting, then unsuccessful people must be lacking in something: work ethic, drive, intelligence, etc. Otherwise, if equal opportunity exists, how could one account for their lack of success? The next step of this legitimation scheme is to suggest that unsuccessful people should be *taught* to work; if these people lack discipline, they should be disciplined by the state.

(C) (Neo)liberal discourse confines the legitimate scope of state intervention to the penal

McBride and Harcourt both argue that liberal theory promotes punishment through incarceration. Concluding her reading of liberal thinkers Locke and Bentham, McBride argues that “punishment is not an exception to the rules of liberalism, but an integral element in the classical liberal paradigm.”³³ She finds that punishment is central to both theorists’ understanding of sovereignty and legitimacy of the state:

Social contract theory is dependent on practices of punishment in an entirely unique sense. Because liberalism is based upon abstractions such as the social contract, natural rights, and even personhood that have no empirical referent, it has from the very start relied on practices of punishment to make these terms operable.³⁴

In other words, classical liberalism was less about curtailing the authority of the state, and more about changing its nature. For instance, punishment is just for Locke if it is within the (rational) law rather than arbitrarily decided by a tyrant. And Bentham’s invention of the Panopticon was an

³³ McBride, K. Punishment and Political Order. University of Michigan Press, 2007. P104.

³⁴ McBride 122

attempt to rationalize punishment rather than destroy it.

Similarly, Harcourt argues that liberalism limits the scope of legitimate government action to the penal.³⁵ In order to remain consistent with liberal discourse, liberal states cannot legitimately intervene in the economy, so they intervene indirectly through the penal sphere. This argument helps explain what some scholars call “carceral Keynesianism,” which describes the Keynesian-like effect of constructing prisons in economically-depressed areas. Since welfare spending is discredited under neoliberalism, economic stimulus comes from the arm of the state that is still perceived as legitimate: the penal arm. However, Harcourt’s theory doesn’t explain prison labor or prison privatization, where the state takes an active role in blending market and punishment.

X, Y, and Z: Institutional Complementarities: Mass Incarceration and Neoliberalism

Just as discourses interact with each other, so do institutions. Two institutions are complementary if one contributes to the effectiveness of the other, or if one mitigates the problematic tendencies of the other. The following three are examples of this kind of institutional cohesiveness.

(Z) Mass Incarceration stabilizes flexible accumulation by quarantining potential dissidents and enforcing discipline in labor markets outside of the prison

Wacquant’s project³⁶ is similar to mine: using a combination of materialist and symbolic theory, he explains the role of the penal state in neoliberalism.³⁷ Wacquant writes:

³⁵ Harcourt, Bernard. *The Illusion of Free Markets*. Harvard University Press. 2012.

³⁶ Wacquant, Loic. *Punishing the Poor: The Neoliberal Government of Social Insecurity*. Duke University Press, 2004.

³⁷ The central difference between Wacquant’s analysis and this paper is that Wacquant does not think unfree labor is an important component in the neoliberal-penal state, whereas I argue it is central to legitimating that state.

The renewed utility of the penal apparatus in the post-keynesian era of insecure employment is threefold: (1) it works to bend the fractions of the working class recalcitrant to the discipline of the new fragmented service wage-labor by increasing the cost of strategies of exit into the informal economy of the street; (2) it neutralizes and warehouses its most disruptive elements or those rendered wholly superfluous by the recomposition of the demand for labor; and (3) it reaffirms the authority of the state in daily life within the restricted domain henceforth assigned to it. The canonization of the “right to security,” correlative to the dereliction of the “right to employment” in its old form...comes at just the right time to shore up the deficit of legitimacy suffered by political decision-makers, owing to the very fact that they have abjured the established missions of the state on the social and economic front.³⁸

For Wacquant, the relationship between the carceral state and neoliberalism is primarily political, and it has both material and discursive dimensions. Mass incarceration serves the transition to flexible accumulation as, on the one hand, it physically separates, detains, and warehouses the populations worst affected by the change, and on the other, legitimates the ongoing repression of poor blacks by casting them as explicitly undeserving due to their supposed criminality.

Materially, the “warehousing” function of mass incarceration is a direct substitute for the public housing function of the welfare state.³⁹ This is akin to O’Connor’s argument about material legitimations: the prison replaces public housing as a mode of providing the material conditions for both subsistence of the poor and state resistance from uprising. In Wacquant’s words, “returning to their original historical mission at the birth of capitalism, poor relief and penal confinement collude to normalize, supervise, and/or neutralize the destitute and disruptive fractions of the postindustrial proletariat coalescing under the new economic conditions of capital hypermobility and labor degradation.”⁴⁰ Wacquant also argues that the threat of incarceration imposes discipline into the low-wage labor market, which aids the transition to flexible and precarious low wage labor in neoliberalism.

For Wacquant, the other side of the political relationship between incarceration and

³⁸ Punishing the Poor 7

³⁹ Punishing the Poor 160

⁴⁰ Punishing the Poor 288

neoliberalism is that the “Tough on Crime” discourse “shores up the deficit of legitimacy” of the state engendered by the unraveling of the welfare state. The legitimating properties of the “right to security” replace those of the “right to welfare; in other words, the War on Drugs replaces the War on Poverty. “Tough on Crime” became politically popular during the crisis of Fordism, and Reagan’s ratcheting up of the Drug War provided new state legitimation just at the time that the Welfare State was experiencing a legitimation crisis.⁴¹

In O’Connor’s terms, mass incarceration is a uniquely neoliberal policy outcome of the contradiction between legitimation and accumulation in capitalism: it supplies legitimation through warehousing potential dissidents, casting the poor as undeserving, and providing a reason for the state to exist besides welfare; and it facilitates capital accumulation through promoting labor discipline in low-end labor markets along with workfare.

(X) Privatized carceral Keynesianism replaces military and welfare Keynesianism

Most new prisons are constructed in parts of the United States most depressed by the economic restructuring of global neoliberalism. In rustbelt and rural communities, local and state politicians usually “sell” prison construction and prison privatization to their constituents by promising that the construction or privatization will bring jobs. In a grotesque twist of New-deal and Great Society-era Keynesianism, prison construction and privatization come to be seen as economic development programs.⁴²

(Y) Without mass incarceration, there would be no reserve army of prison laborers; without prison labor, mass incarceration would be even more expensive for taxpayers

⁴¹ This is expanded upon in the “War on Drugs and Mass Incarceration” section on page 56.

⁴² Parenti 1999; and Herival and Wright Prison Nation, Taylor and Francis Books, 2003.

Mass incarceration and prison labor are complementary in this obvious way. Most legislators realize that a couple million people behind bars represent an untapped labor force that could help pay for the astronomical costs of mass incarceration through unpaid or underpaid prison labor. Discursively, mass incarceration is cast as less wasteful by propagating the image of the toiling convict.

1 and 2: Contradictions (and Resolutions) of Neoliberal Penalty

A “contradiction” in this sense isn’t necessarily a perfect logical contradiction. Rather, the word refers to dialectical tension or opposition. By the same token, a “resolution” doesn’t completely resolve the tension. Resolutions lessen the extent to which the contradiction is visible; the contradiction still exists, even as actors attempt to destroy its evidence through such apparent policy “resolutions.” This is the mechanism through which structural contradictions produce aesthetic (superficial) changes: the contradictions themselves do not speak or act, but political actors respond to crises that structural contradictions create through discourse and policies that are attempts to fix the crisis and hide the contradiction. The following are two examples of structural contradictions of the neoliberal state and their imperfect resolutions.

1) Material Problem: Who pays for mass incarceration?

Resolution: Inmate labor and prison privatization shift the cost of incarceration to the incarcerated.

Mass incarceration is expensive. The federal government’s 2012 prison budget was over \$6 billion,⁴³ and that doesn’t even count the prison budgets in the 50 states. An independent study of 40 states found that the total cost of incarceration to taxpayers in those states was \$39 billion.⁴⁴ In

⁴³ BOP 2012 Budget Request, available at www.justice.gov

⁴⁴ VERA Institute of Justice, The Price of Prisons. 2012.

an era of austerity at both the state and federal level, when conservatives balk at “unnecessary” and “frivolous” budgets of a few million for things like parks or the arts, these numbers should raise a few eyebrows. As noted in the introduction to this section on the neoliberal-penal state, one problem with the welfare state for capitalists was that they had to pay for it. The neoliberal-penal state creates this problem again, except now the question is, who pays for mass incarceration?

In different ways, prison privatization and prison labor both shift the cost of incarceration to the incarcerated. Privatization cuts the cost of incarceration by skimping on essential services for inmates, such as medical care, food, facilities, and supervision.⁴⁵ Underpaid prison labor for maintenance also cuts costs on the backs of the incarcerated, as does privatized prison labor for external companies in which portions of the already-low wages are garnished for prison expenses like room and board.⁴⁶ Thus prison privatization and prison labor are mechanisms for resolving the problem of paying for mass incarceration, by literally making prisoners pay.

A 2011 New York Times article publicized examples of states that used prison labor to cut costs of incarceration, including Florida:

“In Florida, where the budget was cut by \$4.6 billion this year, analysts say inmate farming could save \$2.4 million a year. That is relatively small potatoes, but enough for the new governor, Rick Scott, to call for an expansion of prison farming. The state already uses 550 inmates to grow 4.8 million pounds of produce a year, and the governor has pledged \$2.5 million to have more inmates grow their own food...The result has been so successful, providing \$192,000 worth of food a year to the prison and saving \$75,000 a year for the university [of Florida, which laid off workers in the agriculture department and replaced them with prisoners], that wardens from around the state have visited to learn about replicating it with their inmates.”⁴⁷

In addition to the blatant substitution of inmate labor for free labor, this case also shows how prison labor can cut costs for governments (and by extension, for taxpayers). Shifting the costs of

⁴⁵ Greene. “Bailing out Private Jails.” 2001. In Herival and Wright. Prison Nation. Taylor and Francis Books, 2003.

⁴⁶ Herival and Wright. Prison Profiteers. The New Press, 2007.

⁴⁷ The New York Times. “Enlisting Prison Labor to Close Budget Gaps,” Brown and Severson. February 24, 2011.

incarceration to the incarcerated thus partially resolves the material and political problem of who pays for the carceral state.

2) Discursive Problem: The big state “Tough on Crime” discourse conflicts with the neoliberal discourse on limited government.

Resolution: Privatizing prisons and propagating the image of the inmate laborer create the illusion that prisons fit into the vision of a market society in the neoliberal fashion.

The material condition of mass incarceration and the “tough on crime” discourse necessarily conflict with another pillar of the neoliberal-penal state: the discourse on limited government and free markets. The popularity of market-like forms of discipline and enclosure, such as private prisons and privatized prison labor in public prisons, is an outgrowth of this discursive contradiction. In other words, *the contradiction in theory between the massive penal state and the limited neoliberal state is resolved in practice through the insertion of markets and labor into American prison systems*. Private prisons and contemporary prison labor are grotesque products of the problem of legitimation and accumulation in neoliberal capitalism. In addition to its role in shifting the costs of incarceration to the incarcerated, prison labor now takes on a symbolic function: it provides discursive cohesion, or patches the legitimation scheme of the neoliberal-penal state by mixing markets and extra-economic discipline. The image of the toiling convict plays into a discourse at the heart of both neoliberalism and mass incarceration: meritocratic individualism. And the fact that this imagined convict is black plays into the history of racialized institutions and racist discourse in the United States.

Comparative Analysis of Unfree Labor and Capitalism

Throughout American history, unfree labor has coexisted with free labor in the development of capitalism. The table on page 32 summarizes and categorizes different forms of unfree labor. It tabulates where and when they existed, who profited from the labor, who enforced the conditions of unfreedom (“incarceration”), what those conditions of unfreedom were, the profitability of the enterprises, and the scale of the unfree mode of accumulation. Subsequent sections will describe and expand on the types of unfree labor in the chart: chattel slavery; indentured servitude; penal servitude in the British colonies (“transport servants”); labor in workhouses (also known as “almshouses,” “poorhouses,” or “poor farms”); inmate labor in the first “Republican Penitentiary,” the Walnut Street Jail; inmate labor in the Auburn penitentiary, (which became the dominant form of incarceration in the 1800s); sharecropping and peonage; convict leasing in the postbellum south; chain gang labor; labor in Federal Prison Industries (UNICOR); labor in Prison Industry Enhancement Certification Programs (PIECP); inmate labor in private prisons; and the Civilian Inmate Labor Program.

The evolution of these institutions of unfree labor is related to trends in political economy, economic development, and political discourse. Historical ironies are numerous, such as the contemporary reappearance of long-dead forms of unfree labor such as chain gangs. Thus an understanding of different historical types of unfree labor—including the political conditions of their origin and their relationships to the rest of the capitalist economy--sheds lights on the contemporary case of prison labor under neoliberalism. The coming sketch of the history of unfree labor in America is meant to develop a structural understanding of unfree labor in American capitalism to be applied to the contemporary case. I will use the Marxian concept of the capitalist state as balancing legitimation and accumulation as a guide in this cross-historical comparison, arguing that

different forms of unfree labor provided solutions to this dilemma of the capitalist state. At various points in American history, different forms of unfree labor have contributed to capitalist accumulation and legitimation. The neoliberal period has seen the resurgence of unfree labor in prisons; but in contrast to most earlier forms of unfree labor, contemporary prison labor contributes more to legitimation than accumulation.

Program	Time Period	Jurisdiction / Area	Profileer	Incarcerator	Conditions of Employment	Profitability / Competitiveness	Scale	Racial Makeup	Notes
Chattel Slavery	Colonial period-1865	American South / Confederacy	Landowners	Masters. Enforced by the state	Forced labor without wages. Slaves are permanent property of the slave owner.	profitable in the short run. (fn about Marx on slavery being inefficient)	economic basis of the antebellum South	African	
Indentured Servitude	Early Colonial period	Colonies	Landowners	Masters. Enforced by the state	Temporary chattel slavery based on a contract	consistently profitable	Significant in early colonies. Mostly replaced by slavery	White European	
Penal Servitude in the British Colonies	Colonial period-1700s	Colonies	Landowners	British State	Similar to indentured servitude	mixed	Minor	White European	
Labor in Workhouses	1660s-1800s	Local communities. Mostly in New England	Workhouse	Self- or community-imposed	Varied with the workhouse. Sometimes voluntary, sometimes forced	Varied with the workhouse	Widespread in New England	Mostly White	
Labor in Walnut Street Prison	1787-1818	Pennsylvania	State / Prison	State of Pennsylvania	wage labor (piecework) in solitary confinement	usually unprofitable (LeRoy)	became the dominant form of prison in USA in the 1800s.	Mostly White	
Prison Labor in the Auburn Penitentiary	1820s-1890s	States	Private business	States	unpaid (forced) labor in groups	Private businesses that used the labor were competitive	dominant form of prison in USA in the 1800s.	Mostly White	
Sharecropping and Penonage	Reconstruction	Southern States	Landowner	Landowner, through debt laws enforced by state	sharecropper works for share of crops. Debt peonage forces the laborer to stay and work	consistently profitable	Replaced slavery as dominant form of labor in Southern agriculture	African American	
Convict Leasing	1865-1928	prisons in the former confederacy	Private business	States*	Forced labor without wages. Private firms contract with the state for a set amount of labor for a fixed period of time	Profitable in boom years but disastrous in bust years due to fixed nature of labor contracts	Was an integral part of the Southern Reconstruction economy (fn to section)	Almost completely African American	* Although the contracting company often housed convicts in camps
Chain Gang	~1900-1955.	Mostly Southern states	public	States	Forced labor without wages. convicts work for the state	cuts labor cost for government	Chain gangs quaged a significant proportion of the roads in the New South	Mostly African American	
FPI: Federal Prison Industries, also known as UNICOR	1935- present.	Federal prisons	Federal government	Federal Government	Wage employment without minimum wage.* Inmates required to work up to 40 hours per week, but can work outside of UNICOR	Non-profit. mandated to break even in long run. Products often late or faulty (McBride 2007)	inmates held in federal prisons, UNICOR employs 19,720 or 18% (FPI report 2007)	~37% African Americans in federal prisons (BOP 2013)	*Up to 80% of wages can be garnished for child support, court fees, incarceration costs
PIECP: Prison Industry Enhancement Program	1979-present	State and local prisons	Private Business	State prisons	Wage employment subject to federal minimum wage legislation.* Inmates can be required to work, but can work outside of the program	Profitable as part of supply chains with other forms of labor	4,675 inmates employed (PIE report March 2012)	~32% African American (Justice Center)	*Up to 80% of wages can be garnished for child support, court fees, incarceration costs
Maintenance and prison-specific work in private prisons	1984-present	Private prisons	Private	States and local governments*	Varies with the prison. Inmates can be required to work	cuts costs for prison company; boosts shareholder profits	5362 workers in 2007. 56% of private facilities had labor programs in 2005	~40% African American (Garland et al)	*through contracts with private businesses
Civilian Inmate Labor Program	1997-present.	Federal prisoners.	Federal government	Federal Government.*	Unpaid forced labor	Cuts costs for Department of Defense	Hard to know since most information is classified	undocumented immigrants awaiting deportation	*Inmates sent to camps on army bases.

A History of Penal and Unfree Labor in the British Colonies and United States, 1600-1975

“Neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction.” -- Article 1 of the 13th Amendment to the United States Constitution, passed 1/31/1865

Colonial Period to Civil War, 1600-1865

“He is himself a commodity, but the labour power is not his commodity” -Marx, Capital Vol. 1, 74

Chattel Slavery

A history of unfree labor in the United States has to begin with slavery, if for no other reason than the fact that most Americans think of slavery and free labor in binary terms--that slavery was a blemish in the country’s history that ended after the Civil War, and that labor relations in the U.S. have resembled “free” labor ever since. African slavery is thus the baseline example of unfree labor in the United States, off of which all other forms will necessarily be judged. This is for good reason: African chattel slavery was without doubt the largest, most systematic, and most horrific form of unfree labor in American history.

The transatlantic slave trade starting bringing African slaves to the British colonies in the 1620s; it escalated throughout the 17th, and peaked in the early 18th century.⁴⁸ The table below lists estimates of the black population in different regions.

⁴⁸ Morgan, Kenneth. Slavery and Servitude in Colonial North America. New York University Press, 2001.

Table: Estimated Black Population in Colonial Regions⁴⁹

Year	New England	Middle Colonies	Chesapeake	Lower South	Total
1620	0	0	N/A	N/A	0
1650	400	500	300	N/A	1,200
1680	500	1,500	4,300	400	6,700
1710	2,600	6,200	22,400	6,600	37,800
1740	8,500	16,500	84,000	50,200	159,200
1770	15,400	34,900	251,400	155,400	457,100

Slaves and their progeny were the legal property of their owners, and the population of slaves in the colonies grew even after importation of Africans slowed, due to slaves having children. In the colonial era, most African slaves worked and lived in the Chesapeake colonies, but as white settlers started to populate colonies such as the Carolinas and Georgia, the epicenter of African slavery in America moved south. Northern colonies also featured African slave labor: “In port cities such as New York and Philadelphia...slaves worked in maritime trades as sailmakers, coopers and dock workers; they often assisted artisans and tradesmen in shops and workshops; and females slaves found a niche as domestic servants.”⁵⁰ However, the racial caste divide was less pervasive in the North: “African Americans’ labour was regarded as interchangeable with that of various free and unfree white workers...Supervisory arrangements, as a result, tended to be flexible, especially where blacks were working in masters’ households.”⁵¹

Working and living arrangements in the South were much different. There, most slaves worked in the gang system, producing crops for export on plantations.

Under this system, slaves worked in units of commonly nine to twelve workers. Their pace

⁴⁹ Morgan 30 and 67

⁵⁰ Morgan 72

⁵¹ ibid

of work was determined by the leader of the gang, a black foreman under the watchful eye of a white overseer; sometimes the managers of plantations also turned up in the tobacco fields to oversee the work routines. Since managers and overseers tended to place fit, young, male slaves in the position of foreman, the pace of the work - at its most intense during the hoeing and weeding during the spring - could exhaust other members of the gang, who were required to work in lines and keep up with the foreman.⁵²

Work changed with the seasons, and also ranged from crop to crop. Constants were that slaves were not paid, had no representation, and had no choice but to work. Masters were free to punish their slaves: statutory laws in all 13 colonies allowed for “a wide range of physical punishments including branding on the cheek or thumbs, amputation of body limbs, splitting noses, castration, and the death penalty,” and other laws prohibited slaves from marrying or testifying in court.⁵³

Ideologies of racial dominance undergirded, legitimated, and grew with the “peculiar institution.” Captain John Smith, an influential early settler of Virginia, said, “Negroes in Africa be as idle and as devilish people as any in the world.”⁵⁴ In fact, “blackness, for Stuart people, suggested connections with the Devil.”⁵⁵ The ideology of white superiority changed with the institutionalization of slavery to be one of *racial dominance* as codified in laws such as those listed above.

However, other ideologies interacted with racial dominance in a way that sometimes softened the hardships of slavery. Morgan identifies both patriarchy and paternalism as distinct but related ideologies that focused on a hierarchical (gendered) family structure that included slaves. “Patriarchy meant acting towards slaves as a father figure, recognizing that black workers were part, as it were, of an extended household.”⁵⁶ Paternalism, on the other hand, “proffered a generous treatment of slaves and expected gratitude in return; [it] promoted the myth of the happy, contented

⁵² Morgan 72

⁵³ Morgan 77

⁵⁴ Morgan 32

⁵⁵ *ibid*

⁵⁶ *ibid*

bonded black worker.”⁵⁷ Morgan argues that patriarchal and paternalistic attitudes fused with racial dominance to form a caste system that was less violent than the laws suggest. However, Morgan does not take into account the ways that the intersection of patriarchy and racial dominance doubly oppressed slave women; an example of this is that white masters could easily get away with raping slave women, but a male slave caught raping a white woman would often face the death penalty.

African chattel slavery is the epitome of unfree labor, and it exemplifies the way that institutions and ideologies reflect each other dynamically. However, historians disagree about the extent to which the southern slave economy was “capitalist.” In one typology of capitalism, slavery is more like feudalism--and therefore “pre-capitalist”--since the slave economy relies so heavily on unfree labor. But slavery in the South interacted with free-labor industry in the North, forming and articulated mode of production⁵⁸ that was pseudo-capitalism, or capitalism with unfree labor:

Slavery and capitalism were deeply entangled with one another as the United States grew into an economic power in the nineteenth century...In the blur of commodities and capital that flowed between regions, it becomes far harder to locate the boundary between a capitalist North and a slave South, with consequences for how we understand North and South as discrete economies—and whether we should do so in the first place⁵⁹

The articulation of Southern slavery with Northern free labor production was a precursor of things to come: later forms of unfree labor, such as convict leasing and sharecropping, further blurred the line between slavery and free labor.

Indentured Servitude

With institutional roots in the English apprenticeship system,⁶⁰ the indentured servitude system allowed poor Englishmen (and fewer women) to cross the Atlantic and settle in the

⁵⁷ Morgan 78

⁵⁸ Wolpe, Harold. *Articulation of Modes of Production: Essays from Economy and Society*. Routledge Kegan & Paul, 1980.

⁵⁹ Rockman, Seth. *Slavery and Capitalism*. University of North Carolina Press, 2012, 1.

⁶⁰ Morgan 10

colonies. “Usually indentured servants had their ship passage paid by the captain in return for the sale of their labour for periods of between three and seven years after they reached their destination.”⁶¹ Like slaves, they were literally their masters’ chattel: masters could sell them or transfer them without the servant’s consent, or whip them to work harder. Servants had no wages, but they received free passage from England, free room and board, and often received freedom dues when their terms ended.⁶² This form of labor was most prevalent in the Chesapeake colonies in the 17th Century.

Although most indentured servants entered into their contracts freely and without coercion, what they signed up for was more or less a period of slavery. Servants in the Chesapeake colonies were forbidden to leave their master’s homes without a pass, and runaway servants in Maryland could be punished by death.⁶³ However, indentured servants retained legal rights to appropriate housing and protection from overwork, and many received freedom dues of either money or land at the end of their indenture. Indentured servitude was thus an early form of labor between chattel slavery and free labor: although they were technically their masters’ chattel, compared to African slaves, indentured servants had more rights, generally experienced better conditions, and critically, had white skin and spoke English. Their servitude was temporary, and their legal “personhood” persisted despite their position as bonded laborers.

Penal Servitude in the British Colonies

During the colonial period, a common form of punishment in Britain was banishment via transportation to the colonies. “Many such ‘transports’ were sold to the labor-hungry colonies of

⁶¹ Morgan 8

⁶² Morgan 9

⁶³ Morgan 20

Virginia and Maryland.”⁶⁴ In early Virginia, these convicts were treated similarly to indentured servants: “Convict servants collected freedom dues upon completion of service... [and] many were absorbed into colonial society the same way as other former servants.”⁶⁵ As with indentured servitude, most convict servants were white: most were Englishmen convicted of crimes.

Whereas convict servants were treated similarly to indentured servants in the early colonies, “a succession of laws enacted in the mid-eighteenth century carved a deep line between convict and other servants, and moved the legal status of convict servants closer to that of chattel slaves.”⁶⁶ By the 1750s, convict servants in a few colonies lost their rights to vote, to trial by jury, and to their freedom dues.

By this time, people convicted in the American colonies were also sentenced to penal servitude. This persisted through the Revolution: in 1786, the Pennsylvania state legislature “enacted a penal code that provided that all convicts other than those sentenced to hang be put to ‘servitude’ as ‘wheelbarrowmen’ on the state’s roads, highways, forts, and mines.”⁶⁷ Legislators reasoned that this form of punishment would both deter wrongdoing through public ignominy and reform the convict through the moral purification of labor.⁶⁸ However, “far from embodying the rational, humane, deterrent workings of the law, the wheelbarrow men quickly came to signify a weak and failing criminal legal system, and all that was unrepugnant, lawless, and ugly.”⁶⁹ The search for a new and better system of “civilized punishment” led to the creation of the first penitentiary in the United States: the Walnut Street Jail in Philadelphia.

⁶⁴ McLennan, Rebecca. The Crisis of Imprisonment. Cambridge University Press, 2008. P 28.

⁶⁵ McLennan 29

⁶⁶ *ibid*

⁶⁷ McLennan 33

⁶⁸ *ibid*

⁶⁹ McLennan 35

The Walnut Street Jail and the Auburn Penitentiary: Early Prison Labor

Christian, Quaker, and republican ideals shaped the 18th century criminal justice reform movement in Philadelphia, which in many ways resembled a quest for the holy grail. The idea that men were perfectible, and that a rational penal policy would reform and discipline the unruly elements of society, elevated criminal justice reform to paramount importance for the two early American intellectual projects: republicanism and evangelism. In the fall of 1787, Benjamin Rush, a Philadelphia intellectual and signatory of the Declaration of Independence, presented “An Enquiry into the Effects of Public Punishments upon Criminals, and upon Society” to Benjamin Franklin’s Society for Political Enquiries. In it, Rush advocated for the prisoner, “BODILY PAIN, LABOUR, WATCHFULLNESS, SOLITUDE AND SILENCE...joined with CLEANLINESS and a SIMPLE DIET”⁷⁰

Rush’s vision materialized in the form of the “republican penitentiary,” a reformatory institution in the truest sense of the word, that they were meant to “effect a spiritual transformation in offenders such that they became orderly, law-abiding citizens.”⁷¹ Early examples of this model include the Walnut Street Jail in Philadelphia, the Newgate penitentiary in Manhattan, and New Jersey’s first penitentiary, which featured a sign on the front door: “LABOR -- SILENCE -- PENITENCE.”⁷² Workshops were built in these prisons, and inmates were forced to work, but critically, they received wages for the full value of their work upon release.⁷³

Given the astronomical expectations for this new institution, it should come as no surprise that the reality of the republican penitentiary failed to live up to the grandiose vision:

“far from imposing silence, solitude, and labor on prisoners, then, the republican penitentiary

⁷⁰ (capitals in original) qtd in McLennan 36

⁷¹ McLennan 38

⁷² McLennan 37

⁷³ *ibid*

gestated unruliness, petty vice, crime, and not uncommonly, outright rebellion.”⁷⁴ So much so, that by 1818, “this mode of punishment was caught up in a crisis of legitimacy.”⁷⁵ many believed that penitentiaries should be abolished altogether, whereas others proposed changing the institution to improve inmate discipline.

The result was an institutional pivot rather than a radical break: the “Walnut Street” model of the “republican penitentiary” gave way to the “Auburn” model of “contractual penal servitude,” made famous by the Auburn penitentiary in New York.

Under this system, the state committed convicted offenders to fortress-like prisons, typically located some distance from towns and cities; sold the convict’s labor power to private manufacturers, who set up shop in the prison and put their prison laborers to productive, ‘congregate labor’ by day; and locked their prisoner-workers down in great stone cellhouses by night.⁷⁶

Unlike in the republican penitentiary, here inmates received no pay for their labor. The combination of “hard, productive labor; harsh corporeal punishment; and the abridgement of the convicted offender’s natural right, freedoms, and common law liberties”⁷⁷ became the new standard for prisons, and the “Auburn model” spread across most Northern and some Southern states during the 19th century. By 1865, the prevalence of this model of punishment led the Congress to exempt penal servitude from the outlawing of slavery in the Thirteenth Amendment.⁷⁸

“Indoor Relief” for the Poor: Almshouses, Poorhouses, Workhouses, and Poor Farms

A variety of institutions housed the destitute in early white America; categories like *almshouse*, *poorhouse*, *workhouse*, and *poor farm* are often used interchangeably to refer to “indoor relief” for the poor. Although these institutions were similar, they had subtle differences:

⁷⁴ McLennan 45

⁷⁵ McLennan 51

⁷⁶ McLennan 17

⁷⁷ McLennan 53

⁷⁸ *ibid*

whereas almshouses, poorhouses, and poor farms were focused on charity for the poor, American workhouses, modeled after those in England, were more akin to prisons. Workhouses had more of a focus on disciplining and reforming the inmate through work. Poorhouses, almshouses, and poor farms usually had a work component, but the focus was less on punishment and discipline. That said, conditions in these institutions varied widely across time and place: a “workhouse” in Maine in 1765 might have been a friendlier institution to its inmates than an “almshouse” in New York City in 1885. The workhouse was more prevalent in New England in the colonial period, and the poorhouse or almshouse was more common on the Eastern seaboard during the 19th and early 20th centuries.⁷⁹

The supposed differences between these institutions for the poor obscure the fact that they performed the same basic functions and were wrought with the same contradictions. Wagner describes how contradictory bourgeois motives shaped these institutions, which arose from different historical predecessors:

First, somewhat different traditions intersected: one of the European workhouse, modeled straightforwardly as a correctional facility, if certainly more short term than the prison, and two, a vaguer notion of a poorhouse or poor farm divorced from a specific correctional intent, but focused on a combination of farm work and shelter. Second, each institution blended a variety of motives--repression, compassion, rehabilitation, and maintenance of a low-wage labor force--with local traditions and economies.⁸⁰

Although no workhouse or poorhouse was identical to the next, they shared the somewhat contradictory characteristics of charity and discipline, or “compassion” and “repression.”

Mixed material motives can help explain this: bourgeois reformers wanted to keep paupers off the streets, but also retain low-wage labor discipline. Both of these motives are evident in the Boston Workhouse Act of 1735:

[...] Whereas the Poor, upon the decay of Trade become still more numerous and want Means to employ and set themselves to Work [...] or by ill Habits become idle and slothfull

⁷⁹ Wagner, David. *The Poorhouse: America's Forgotten Institution*. Rowman and Littlefield Publishers, 2005. P3-5

⁸⁰ Wagner 35

and very burthensome to the Town, in such case or whenever the Town of Boston shall judge it necessary or convenient to erect, provide or endow an House for the Reception and Employment of the Idle and Poor, [it] shall be authorized and impowered so to do; which house shall be under the Regulation of the Overseers of the Poor.⁸¹

Reformers wanted to alleviate the burden of the “slothful” paupers on the town of Boston, so they authorized the “Overseers of the Poor” to build workhouses where the poor would find shelter at the cost of their labor power.

Some intellectuals, such as Benjamin Franklin, objected to charitable institutions for the poor on the grounds that they incentivized debauchery and disincentivized good work habits.

Responding to the English Elizabethan Poor Law, he said,

There is no country in the world in which the poor are more idle, dissolute, drunken and insolent [than England]. The day you passed that act, you took away from before their eyes the greatest of all inducements to industry, frugality and sobriety by giving them a dependence of something else than a careful accumulation during youth and health support in age and sickness.⁸²

Franklin’s concerns reflect a common thread in English and American discourse on poverty: the notion that the poor are poor because of their own moral ineptitude. Thus fear of incentivizing immorality has guided discourse on poverty relief throughout American history.

The concern that charity would disincentivize work helps to explain why workhouses and poorhouses included dull and often unprofitable labor: “work was primarily symbolic.”⁸³ Having inmates stack and re-stack wood over and over--more common than the archetypal smashing of useless boulders--fulfilled the bourgeois requirement that inmates work, lest they lose their discipline due to charity. Reformers believed that charity without work would harm the poor in the long run, and the desire to discipline stemmed from the same impulse to help the poor as the will to give charitably. This helps explain why the poorhouse exhibited the “contradictory” characteristics

⁸¹ Boston Workhouse Act of 1735

⁸² Benjamin Franklin, 1766, qtd. in Bremner, Robert H. The Public Good. Alfred A. Knopf Publishers, 1986.

⁸³ Wagner 55

of repression and compassion, and how that seeming contradiction was actually self-reinforcing: compassion came at the expense of repression, and discipline was only possible through charity.

Reconstruction, Jim Crow, and the “Gilded Age” 1865-1935

“The old is dying and the new cannot be born. In the interregnum, a great variety of morbid symptoms appear” - Gramsci, Prison Notebooks

Political Economy and Political Discourses

Contradictions of Economic and Political Liberalism

Two intertwined political discourses defined early capitalist development in America: political liberalism and economic liberalism. Whereas political liberalism was a political philosophy in the tradition of Locke and Jefferson, economic liberalism (or laissez-faire) was a set of proposed political-economic policies. The liberality of these discourses was that they both stressed freedom: freedom from the tyranny of kings and despots in the case of political liberalism, and freedom from arbitrary regulation and restraint of trade in the case of economic liberalism.

According to Karl Polanyi, by the 1820s economic liberalism consisted of three classical tenets: “that labor should find its place on the market; that the creation of money should be subject to an automatic mechanism; that goods should be free to flow from country to country without hindrance or preference; in short, for a labor market, the gold standard, and free trade.”⁸⁴

Philosophical advocates of laissez-faire, most notably Herbert Spencer, tied these policy minutiae to grandiose language on liberty; in other words, they expanded the scope of political liberalism to include the economy. Spencer wrote:

I do not think laissez-faire is to be regarded simply as a politico-economical principle only, but as a much wider principle--the principle of letting all citizens take the benefits and evils of their own acts: not only such as are consequent of their industrial conduct, but such as are consequent upon their conduct in general.⁸⁵

⁸⁴ Polanyi, Karl. The Great Transformation. Ferris, 1944. P 135

⁸⁵ Qtd in Fine, Sidney. Laissez Faire and the General-Welfare State. university of Michigan Press, 1969. P32

This excerpt shows how the discourse on economic liberalism grew in part out of the discourse on political liberalism, and helps explain why the United States--a country whose founding Declaration denounced the tyranny of kings--would embrace laissez-faire ideas.

However, laissez-faire was more of a political discourse than a material reality. Polanyi shows that in the case of early capitalism, laissez-faire was just one side of a *double movement of capitalism* that also included interventionism, “the principle of social protection aiming at the conservation of man and nature as well as productive organization...using protective legislation, restrictive associations, and other instruments of intervention as its methods.”⁸⁶ Thus Polanyi shows that the discourse on economic liberalism was only half of the dialectical development of capitalism, which also involved interventionism; these two opposites together made up the double movement of the development of early capitalism. As a dialectic, interventionism and economic liberalism were at once cohesive and contradictory: contradictory in the sense that the discourses were at odds with one another, but cohesive in that they worked together to sustain the material development of early capitalism.

Polanyi argues that Laissez-Faire economics on its own was socially unsustainable; that “paradoxically enough, not human beings and natural resources only but also the organization of capitalistic production itself had to be sheltered from the devastating effects of a self-regulating market.”⁸⁷ Here, Polanyi references the Marxian idea of the “contradiction” of capitalism: that the workings of capitalism undermine the social basis for the existence of the system. This argument is interesting in the context of post-civil war unfree labor regimes; the coming sections will explore instances where capitalist accumulation proceeded in the absence of social protection, providing a counterexample to Polanyi’s double movement theory.

⁸⁶ Polanyi 132

⁸⁷ *ibid*

Jim Crow

Loic Wacquant defines the “Jim Crow System” as “legally enforced discrimination and segregation from cradle to grave that anchored the predominantly agrarian society of the South from the close of Reconstruction to the Civil Rights revolution which toppled it a full century after abolition”⁸⁸ On the one hand, Jim Crow was a certain kind of racism made popular by minstrel shows and racist cartoons, and enforced by lynchings and segregation laws.⁸⁹ But calling Jim Crow a “system” brings out the legality and institutionalization of segregation and discrimination. In other words, Jim Crow was more than the sum of myriad acts of racism: it was a *system of racial domination*. In that way, Jim Crow was like chattel slavery in the antebellum South, but different in that racial domination was not tied directly to the dominant mode of production. Sections below on peonage and convict leasing show how racial domination remained tied to production and accumulation in this period. However, after the Civil War and the Thirteenth Amendment, the relationship between racial domination and accumulation was transferred through different legal mediums--debt in the case of peonage and the criminal justice system in the case of convict leasing.

Forms of Unfree Labor

Sharecropping and Peonage

Contrary to popular belief, neither Lincoln’s Emancipation Proclamation nor the Thirteenth Amendment resulted in the end of slavery in the American South. It is true that this legislation officially abolished “slavery,” in the sense that it became illegal for one person to own another person; however, critical defining features of chattel slavery, such as racial domination, forced labor, and labor without wages or representation, resurfaced in other coercive labor regimes in the

⁸⁸ Wacquant, Loic. “From Slavery to Mass Incarceration.” *New Left Review*, 13. 2002. P41

⁸⁹ Lewis. Jim Crow America. University of Arkansas Press, 2009.

New South. The persistence of slave-like conditions in postbellum black labor

raises the question of how viable traditional terms such as freedom and slavery are when discussing post-Civil War agricultural labor. Coercion, the crucial element in involuntary servitude, came from sources other than the words of the landlords and merchants. It came from the law, which increasingly tightened its grip on workers; from the contract, which became a year sentence on a few acres; from violence, which gave object lessons to those who objected to the system; and from illiteracy, which placed the worker at the mercy of the literate elite and kept him from seeking jobs that required more skill than plowing, hoeing, and picking.⁹⁰

Sharecropping, as a mode of production, is not by definition “unfree labor.” a sharecropper is simply a laborer who works land in return for a share of the crops. This labor is usually contractual, at least in theory. The problem with calling it “free labor” in the case of the postbellum South is that, as Daniel recounts, racial domination infused sharecropping with slavery-like characteristics. Illiterate black workers who signed a contract every year experienced work and life in much the same way as slaves did before--in many cases, the same workers labored for the same plantation owners, and the Thirteenth Amendment meant little to them.

The most slave-like conditions existed under the peonage system. Peons were laborers who were “bound in debt from year to year and who were coerced to work out what they owed.”⁹¹ These workers made up as much as one third of the Southern agricultural labor force in the years after the Civil War.⁹² Clearly, the institutions of chattel slavery and the discourses of racial domination did not magically end with the Union’s victory in the Civil War and the passage of the Thirteenth Amendment.

Convict Leasing and Similar Programs

After the Civil War, the South’s infrastructure and economy were ruined. “Reconstruction”

⁹⁰ Daniel, Peter. “The Metamorphosis of Slavery, 1865-1900,” from Nieman, Donald. African American Life 1865-1900 From Slavery to Sharecropping. Garland Publishing, 1994. P64

⁹¹ *ibid*

⁹² *ibid*

was the Federal Government's attempt to remake the South in the North's image. However, despite the Thirteenth Amendment, the Southern culture and economy still resembled that of a slave society: reconstruction of Southern infrastructure and the industrialization of the South were built on the backs of laboring black convicts. Although the institutions of convict labor in the postbellum South shared characteristics with chattel slavery, they represented, like the peonage-sharecropping system, a unique and transitional form of labor between slavery and free labor.

States in the postbellum South instituted a variety of programs that utilized convict labor, taking advantage of the clause in the 13th Amendment that allowed forced labor in the case of "punishment for crime whereof the party shall have been duly convicted." These programs included the *Contract*, *Piece-Price*, *Public Account*, and *Convict Lease* systems. The chart below describes the often subtle differences between these convict labor programs.

Convict Labor System	Ownership of Means of Production	Profiteer	Location of Labor	Supervision of Labor
<i>Contract</i>	State	Private industry (contractor)	Prison	Private industry (contractor)
<i>Piece-Price</i>	State	Private industry (contractor)	Prison	Prison guards
<i>Public Account</i>	State	State	Prison	Prison guards
<i>Convict Lease</i>	Private industry	Private industry	Work camps	Private industry

Source: information in Lichtenstein, 1996

In the first three systems, part of the prison was turned into a manufacturing plant, with variations on who supervised and profited from the labor. In the contract system, private contractors supplied the raw goods, supervised production, and sold the finished products. The

piece-price system was much the same, except that prison guards, rather than the contractor, supervised production. In both of these systems, private companies profited from convict labor. The outlier was the public account system, which featured state-controlled industries that sold mostly to the government.

The most infamous of the postbellum Southern convict labor programs was the convict lease system, which sent prisoners to work for private companies off-site. Companies would sign leases with the state for a certain amount of inmate labor for a determined period of time. In some cases, the demand for inmate labor outstripped supply, and the introduction of harsh black codes in southern states were as much a response to the need to fill convict lease agreements as they were a method of social control.⁹³

Leased convicts laid railroad tracks, mined coal and coke, and made pig-iron, in addition to a variety of smaller manufacturing jobs. Convict labor was not just a way for a few opportunist capitalists to make exorbitant profits; it was that, and also a fundamental component of the South's reconstruction and industrialization. For example, the low price of coal and coke mined with leased convict labor made it possible for smaller Southern industries to compete with Northern manufacturing giants. It made the new Southern pig-iron industry profitable (at least with the use of more convict labor). Cheap pig-iron made lighter Southern industry more competitive. And the construction of new railroad tracks helped heavy and light industry all over the South.⁹⁴ In these ways, convict leasing was a transitional *mode of production* in a systemic sense: it was self-reinforcing system that both drew from the discourses and institutions of slavery--since racial domination legitimated both the black codes and the exploitation of black labor--and created the material conditions for subsequent free labor in the industrialized south.

⁹³ Fierce, Milferd. Slavery Revisited: Blacks and the Convict Lease System, 1965-1933. CUNY Press, 1994. P77.

⁹⁴ Lichtenstein

Convict leasing faced stiff opposition from liberal politicians, and especially from organized labor, whose bargaining power was repeatedly crushed by leased convict replacement workers during strikes.⁹⁵ Political opposition led to the slow demise of most forms of for-profit convict slave labor, with different states enacting different abolitionist legislation around the turn of the century. However, one transitional coercive labor form gave way to another: “In Georgia after 1908 [when the state outlawed the convict lease] the futile effort to reconcile labor recruitment, racial control, and infrastructural development with a rational and humane penal policy merely shifted from the private to the public sector.”⁹⁶ State-controlled convict slavery, often in the form of the *chain gang*, replaced for-profit, private convict slavery.

Chain Gangs

For decades, chain gangs built and graded the South’s roads. Working conditions were often worse than in chattel slavery:

Convicts labored, ate, and slept with chains riveted around their ankles. Work was done “under the gun” from sun-up to sundown, shoveling dirt at fourteen shovelfuls a minute. Food was bug-infested, rotten, and unvarying; “rest” was taken in unwashed bedding, often in wheeled cages nine feet wide by twenty feet long containing eighteen beds. Medical treatment and bathing facilities were unsanitary, if available at all. And, above all, corporal punishment and outright torture - casual blows from rifle butts or clubs, whipping with a leather strap, confinement in a “sweat-box” under the southern sun, and hanging from stocks or bars - was meted out for the most insignificant transgressions, particularly to African Americans who remained the majority of chain gang prisoners.⁹⁷

There is material logic behind why working conditions in chain gangs (or convict leasing) would be worse than in chattel slavery. Whereas a slave is someone’s property, a convict costs nothing.

An 1883 convict lessee summed up the difference: “Before the war, we owned the negroes. If a man had a good negro, he could afford to keep him...But these convicts, we don’t own ‘em. One

⁹⁵ Lichtenstein

⁹⁶ Lichtenstein 159

⁹⁷ Lichtenstein 183

dies, get another.”⁹⁸ In contrast to chattel slavery, the men who supervised convict labor, private or public, had no material incentive to maintain the convicts’ health and well-being: they lost nothing if the convict died or was incapacitated. This suggests the beginning of the turn from Wright’s ideal-typical *exploitation* to *oppression*: although the convicts were economically useful to the state, they became more disposable.

Chain gangs existed in various forms in southern states until the 1950s. As with convict leasing, chain gang workers laid the infrastructural foundation for the New South’s economy by building its roads. And as in the lease system, they convicts were unpaid slave labor. However, chain gangs were different than convict leasing in the important respect that they labored on public works projects for the government rather than for a capitalist’s direct financial gain. As such, chain gangs were another transitional form of coerced labor, which contained the seeds of future penal labor confined to governmental purchase.

⁹⁸ Qtd in Mancini, Matthew. One Dies, Get Another: Convict Leasing in the American South. University of South Carolina Press, 1996. P3

Fordism and the Military-Industrial Complex, 1935-1975

Political Economy and Political Discourse

“Guns and Butter:” Fordism, Keynesianism and the Welfare-Warfare State

In this period, “capitalism in the advanced capitalist countries achieved strong but relatively stable rates of economic growth. Living standards rose, crisis tendencies were contained, mass democracy was preserved and the threat of inter-capitalist wars kept remote.”⁹⁹ Three factors defined the political economy of the United States from the interwar period until the mid 1970s: Fordism, Keynesianism, and the Welfare-Warfare State. Although separate concepts, these three factors combined synergistically in a nexus of political economy, state, and discourse. The table below categorizes these three terms.

Table: The Fordist Regime of Accumulation

Mode of Accumulation	Characteristic Discourse	Role of the State
Fordism	Keynesianism	Welfare-Warfare State

As a mode of accumulation, Fordism was based on the principles of the Ford Motor Company: streamlined mass production on assembly lines, high wages to stimulate demand, and corporate compromise with strong organized labor. Beyond individual corporations modeling themselves off of Ford, these principles worked on a systemic level.

Fordism in its strict, ideal-typical sense involves a virtuous circle of growth based on economies of scale, rising incomes linked to productivity, increased mass demand due to rising wages, increased profits based on full utilization of capacity and increased investment in improved mass production equipment and techniques.¹⁰⁰

⁹⁹ Harvey, David. The Condition of Postmodernity. Basil Blackwell, 1989. P129.

¹⁰⁰ Jessop, Bob. The Future of the Capitalist State. Polity, 2003. P56

Fordism displayed internal cohesion as a mode of production, since high wages stimulated demand for mass-consumption products.

However, Fordism did not exist in a vacuum: the “Keynesian Welfare National State” (KWNS) facilitated the reproduction of the Fordist mode of production by further stimulating demand and correcting business cycles.

The KWNS was *Keynesian* insofar as it aimed to secure full employment in what was treated as a relatively closed national economy and to do so primarily through demand-side management...the KWNS was oriented to *welfare* insofar as it tried to regulate collective bargaining within limits consistent with full employment levels of growth; to generalize norms of mass consumption beyond male workers earning a family wage in Fordist sectors, so that all full national citizens and their family dependents, if any, might share the fruits of economic growth (and thereby contribute to effective domestic demand); and to promote forms of collective consumption favorable to the Fordist mode of growth.¹⁰¹

Jessop shows how Fordism, Keynesianism, and the Welfare State were synergistic. Welfare spending, as advocated by Keynesian economics, stimulated aggregate demand, thus contributing to the stability of capitalist accumulation. The KWNS also contributed to the legitimation of Fordist capitalism, since welfare spending and labor laws that facilitated collective bargaining helped spread the benefits of economic growth to the working class.

But Jessop’s concentration on the Keynesian Welfare State overlooks the other side of the state’s involvement in Fordist capitalism: the Warfare state. In his famous 1961 farewell address, President Eisenhower said:

Until the latest of our world conflicts, the United States had no armaments industry...But now we can no longer risk emergency improvisation of national defense; we have been compelled to create a permanent armaments industry of vast proportions. Added to this, three and a half million men and women are directly engaged in the defense establishment. We annually spend on military security more than the net income of all United States corporations. This conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence -- economic, political, even spiritual -- is felt in every city, every Statehouse, every office of the Federal government.¹⁰²

¹⁰¹ Jessop 59

¹⁰² Eisenhower’s 1961 farewell address. Public records.

Later in that speech, Eisenhower coined the term “Military-Industrial Complex” to describe the nexus between defense contractors and pentagon spending in the wake of World War II and the Korean War. The federal government’s Keynesian experiment was thus a mixture of military and welfare spending, which helped to stabilize and stimulate the Fordist economy.

Forms of Unfree Labor

During this period, unfree labor declined as Marx expected it would. Convict leasing and chain gangs left the south, where free labor in extractive and manufacturing industries reigned. The main exception to this rule was the formation of Federal Prison Industries (FPI), which in this period remained a rehabilitation program for federal prisoners.

Federal Prison Industries: Early Years

Responding to concerns that prisoner idleness was breeding disruptive behavior in the growing Federal prison population, President Franklin D. Roosevelt issued Executive Order 6917 Establishing the Federal Prison Industries, Inc. (FPI), on December 11, 1934. This order created a board of directors for FPI and proclaimed that

The said corporation shall have power to determine in what manner and to what extent industrial operations shall be carried on in the several penal and correctional institutions of the United States and shall, so far as practicable, so diversify prison industrial operations that no single private industry shall be forced to bear an undue burden of competition with the products of the prison workshops.¹⁰³

This executive order was the result of negotiations with AFL-CIO President William Green, who voiced labor’s concern that prison labor would undercut wages of free workers.¹⁰⁴ Due to these and similar concerns from the business elite, FPI “would make products for sale exclusively to the

¹⁰³ FDR’s Executive Order 6917. Public records.

¹⁰⁴ Factories with Fences: 75 Years of Changing Lives. UNICOR, 1996.

Federal Government; it would not compete against private sector companies in the commercial market.”¹⁰⁵ However, in order to guarantee that the government corporation had customers, subsequent legislation introduced the “mandatory source” clause that required the federal government to buy from FPI. “Its mandatory source provision was necessary to offset several competitive disadvantages, such as its labor-intensive production environment, untrained and uneducated labor pool, security costs and production delays associated with prison operations and, of course, its restriction to a single customer [the government].”¹⁰⁶

After Congress approved \$4 million in seed money, FPI began operations as a self-sustaining government corporation under the jurisdiction of the Federal Bureau of Prisons, on January 1, 1935.¹⁰⁷ Early industrial operations included a textile mill, a shoe factory, a mattress factory, a clothing factory, and a furniture assembly plant.¹⁰⁸ “When FPI first began operating, in 1935, it employed about 2,000 prisoners, or 13 percent of the federal prison population. By 1940, FPI was able to employ about 18 percent of the population, and sales reached almost \$5.4 million.”¹⁰⁹

FPI grew slowly in its early years for a few reasons. Firstly, “the law, coupled with FPI’s own regulations imposed severe competitive disadvantages, particularly during the Depression. The most notable competitive disadvantage was FPI’s widespread product diversification.”¹¹⁰ Another competitive disadvantage, from a profit-making standpoint, was that FPI’s mission stated that it would employ as many inmates as possible: “it was forced to operate as a relatively unstreamlined and unproductive business because of its mission to employ as many inmates as possible. In addition, the corporation opted for labor-intensive practices, which were less efficient

¹⁰⁵ Factories with Fences 8

¹⁰⁶ Factories with Fences 26

¹⁰⁷ The Gale Group, Inc. International Directory of Company Histories. 2013.

¹⁰⁸ Factories with Fences 15

¹⁰⁹ International Directory of Company Histories

¹¹⁰ Factories with Fences 18

than modern manufacturing processes.”¹¹¹ In the early years, FPI stuck to its mission, and provided “rehabilitative” employment and training to as many inmates as possible while remaining financially self-sustaining.

Federal Prison Industries: World War II and the Korean War

FPI exploded its production during World War II: convicts worked double and triple shifts, and 95% of the goods produced were sold to the military.¹¹² “Although FPI continued to employ about 3,500 inmates, production during the war tripled.”¹¹³ According to a history written by an employee of FPI, the company “matured into a national asset, producing items such as bomb fins and casings, TNT cases, parachutes, cargo nets, wooden pallets...FPI added welding, aircraft sheet metal work, shipbuilding crafts, auto/aviation mechanics, drafting and electrician training to its training programs.”¹¹⁴

Since its inception, FPI’s productivity and profitability have fluctuated with the American military demand. The company has always flourished during wars and struggled in between. After World War II, “FPI was forced to cancel orders with its material suppliers, and sales plummeted from \$17.5 million to less than \$10.7 million in 1946.”¹¹⁵ But the Korean War brought back business: FPI employed more than 3,800 inmates and had sales of \$29 million in 1952.¹¹⁶ After the Korean War, “FPI expanded greatly and focused on construction projects. Inmate employees worked on the construction and renovation of buildings at more than half of the 31 federal prisons.”¹¹⁷

¹¹¹ International Directory of Company Histories

¹¹² International Directory of Company Histories

¹¹³ ibid

¹¹⁴ Factories with Fences 19

¹¹⁵ Factories with Fences 20

¹¹⁶ Factories with Fences 21

¹¹⁷ International Directory of Company Histories

Federal Prison Industries: “The Rehabilitative Years 1963-1976”

With the exception of the War in Vietnam, which “led to a short-term spike in FPI’s production and sales levels,”¹¹⁸ FPI concentrated its efforts more directly on “rehabilitative” programs like job training in the nineteen-sixties and seventies. “Rehabilitation philosophy reached its zenith in the 1960s. The medical model — based on the theory that inmates’ criminal tendencies could be diagnosed and treated in a manner similar to physical disease — resulted in FPI’s gain of greater visibility and value.”¹¹⁹ During this period, FPI was more of a prison rehabilitation program than a for-profit corporation. All of this would change in the late 1970s and early 1980s, when economic restructuring and political pressure caused FPI to change its name and with it, its priorities.

¹¹⁸ Factories with Fences 23

¹¹⁹ Factories with Fences 23

Neoliberalism and Unfree Labor: Accumulation or Legitimation?

1975-Present

“As the social safety net of the charitable state unraveled, the dragnet of the punitive state was called upon to replace it” - Wacquant, Punishing the Poor, 58

Political Economy and Political Discourse

Stagflation and the Crisis of Fordism

The 1970s marked the gradual breakdown of Fordism as political and economic pressures of stagflation coalesced into a multi-faceted crisis. “Stagflation”--stagnant economic growth paired with inflation, an anomaly for traditional Keynesian economics, which holds that government spending should increase inflation and economic growth by stimulating aggregate demand--appeared for the first time in American capitalist history. The stagflation crisis of Fordism involved an economic crisis associated with Keynesian welfare spending in an increasingly globalized capitalist economy; and it also involved a political crisis in which the “postwar consensus”--including the class compromise between capital and labor based on steady productivity and real wage gains, and the gendered compromise (or patriarchal hegemony) of the single male breadwinner family model--began to fray. Material changes, such as globalization, drove an ideological shift from Keynesianism to neoliberalism. And neoliberal ideology reinforced the material shift from Fordism to flexible accumulation as political discourse became codified in policy.¹²⁰

The economic crisis of Stagflation exposed the contradictions of a Keynesian welfare state embedded in increasingly globalized capitalism:

Stagflation problematizes the state’s capacity to engage in contracyclical demand management, and, in the face of increasing internationalization [globalization], leads to additional problems. These include the risk that increased demand is met from abroad rather

¹²⁰ Harvey, Condition of Postmodernity.

than domestic production; the state's growing inability to control interest rates and/or exchange rates; and, with each successive round of stagflation, growing public debt at a time when internationalization was linked to rising interest rates.¹²¹

So structural changes in global capitalism prompted the Stagflation crisis. But the economic crisis also exposed growing political tensions, and through exposure, prompted a political crisis. One of the growing political tensions was the class compromise between capital and labor: "The growing capital intensity of production and the dependence of economies of scale on full capacity utilization increased the strike power of organized labour; and continuing search for productivity increases through work intensification led to growing alienation on the shop floor"¹²²

The changing structure of capitalism--ie globalization--created the material conditions for neoliberal discourse to gain popularity and descriptive power as an alternative to the Keynesian policies that were causing Stagflation.

Overall, it no longer appeared so self-evident that national economic space was the best starting point for economic policies aimed at promoting growth, innovation, or competitiveness. This prompted more interest in, and a shift towards, supply-side intervention and policies that would insert local, regional, or national economic spaces more effectively into the global economy in the hope of securing some net benefit from internationalization.¹²³

The enduring political result from the Stagflation crisis were two coinciding shifts: materially, from Fordism to flexible accumulation, and discursively, from Keynesianism to neoliberalism.

Neoliberalism and Flexible Accumulation

In 1980, Ronald Reagan won the U.S. presidential election on a platform based on shrinking the size of the federal government. In his inaugural address, he proclaimed, "In this

¹²¹ Jessop 81

¹²² *ibid*

¹²³ Jessop 83

present crisis, government is not the solution to our problem”¹²⁴ This understated proclamation was a radical reversal of the Keynesian discourse that had guided policymaking in administrations on both sides of the party line since Franklin D. Roosevelt. In the next eight years, the Reagan administration implemented neoliberal reforms and changed the course of American politics in an enduring way: subsequent administrations, including those of Presidents Bush Senior, Bush Jr, Clinton, and Obama, would inherit his neoliberal legacy.

Neoliberalism is a political-economic discourse that advocates a certain way of organizing the economy, the latter of which Harvey calls “flexible accumulation.” Neoliberalism was a “paradigm shift” that pushed the American economy “from a Fordist growth model and associated accumulation strategy based on mass production, scale economies, and mass consumption to one oriented to flexible production, innovation, scope economies, innovation rents and more rapidly changing and differentiated patterns of consumption.”¹²⁵ Jessop describes the regime of flexible accumulation as a set of institutions; neoliberalism is the discourse or ideology that creates flexible accumulation. In other words, neoliberal discourse, as exemplified by Reagan’s inaugural speech, is transformed into material changes through neoliberal reforms which move the economy towards more flexible accumulation.

Table: The Neoliberal Regime of Accumulation

Mode of Accumulation	Characteristic Discourse	Role of the State
Flexible Accumulation	Neoliberalism	Neoliberal-Penal State

This transformation is rife with problems and contradictions. On the one hand, “according to theory, the neoliberal state should favour strong individual private property rights, the rule of

¹²⁴ Reagan 1980 Inaugural Address. Public records

¹²⁵ Jessop 83

law, and the institutions of freely functioning markets and free trade.”¹²⁶ On the other hand, “the sanctity of contracts and the individual right to freedom of action, expression, and choice must be protected. The state must therefore use its monopoly on the means of violence to preserve these freedoms at all costs.”¹²⁷

In sum, the neoliberal state must wield coercive state power in order to “preserve freedom;” state power increases under the guise of limited government. And the neoliberal discourse on “free markets” whitewashes the extent to which the neoliberal state *creates* markets by privatizing public services and propping up private contractors through government contracts. The section below investigates one example of this contradiction in neoliberal discourse: mass incarceration in the “land of freedom.”

The War on Drugs and Mass Incarceration

The era of mass incarceration in America began with Nixon’s war on drugs. Nixon won the 1969 presidential election amidst social-political crisis. The civil rights movement had veered towards the more confrontational Black Power movement as the assassination of Martin Luther King, Jr. prompted race riots in major American cities. Wacquant cites the race riots of the late 1960s as the crisis that disrupted the ghetto model of ethnoracial enclosure: “the decades-long mobilization of African-Americans against caste rule finally succeeded, in the propitious political conjuncture of crisis stemming from the Vietnam war and assorted social unrest, in forcing the federal state to dismantle the legal machinery of caste exclusion.”¹²⁸ Wacquant argues that the unraveling of the black ghetto created the need for a new institution to fulfill the dual mandates of “ethnoracial enclosure” and “labor extraction,” which the expansion of the prison system

¹²⁶ Harvey. Neoliberalism. P64

¹²⁷ *ibid*

¹²⁸ Wacquant. “From Slavery to Mass Incarceration.” P49

fulfilled.¹²⁹ Wacquant's argument is compelling but functionalist: it imagines the “system” as having its own functional “needs,” which makes the argument somewhat deterministic.

Missing from Wacquant’s analysis is the identification of agents whose political discourse and policymaking laid the groundwork for mass incarceration. Nixon’s presidency transformed the U.S. penal state just as much as Reagan transformed the country’s economic policies. Nixon’s War on Drugs capitalized on white fears of the rising black power and codified racism through the subterfuge of drug enforcement. During the 1969 presidential race, Nixon had “invoked the specter of street crime, political chaos, and narcotics abuse--much of which was thinly veiled code for “the race problem,” namely African American migration and the political demolition of US apartheid...Thus the image of the evil dope fiend loomed large in the new administration’s rhetoric, as it had during the campaign.”¹³⁰ From the social-political crisis of the breakdown of the black ghetto was born the “law and order” discourse, which would come to dominate criminal justice rhetoric for the rest of the 20th century.

Through focusing on drug enforcement, Nixon increased the policing power of the U.S. state through a method whose constitutionality had been upheld.¹³¹ “Narcotics would be the Trojan horse for deeper federal involvement in policing...The “war on drugs” would give the Feds the necessary latitude to beef up the nation’s haphazard and often contradictory patchwork of criminal law.”¹³² Focusing on drugs was thus a necessary ruse that served both political functions, by capitalizing on white racist fear, and policy functions, by accomplishing the task of radically increasing the state’s coercive power within the “limited government” constraints of the U.S. Constitution.

¹²⁹ *ibid*

¹³⁰ Parenti 9

¹³¹ by the Harris Act of 1914 and the constitutional right to tax (Parenti 9)

¹³² *ibid*

Like Nixon, Reagan used racially coded language in his campaign to capitalize on white fears; two examples that stand out are his oft-repeated story of the Chicago “Welfare Queen” and his portrayal of the (black) criminal as, “a staring face--a face that belongs to a frightening reality of our time: the face of the human predator.”¹³³ In contrast to Nixon, however, the Reagan administration backed up the racist, “tough on crime” discourse with radical action--it turned Nixon’s mostly rhetorical “war on drugs” into a full fledged war:

Practically overnight the budgets of federal law enforcement agencies soared. Between 1980 and 1984, FBI antidrug allocations increased from \$8 million to \$95 million. Department of Defense antidrug allocations increased from \$33 million in 1981 to \$1,042 million in 1991. During that same period, DEA antidrug spending grew from \$38 to \$181 million.¹³⁴

This increased spending funded the creation of a domestic paramilitary force to fight the War on Drugs. SWAT teams, which before 1980 were only used in extreme emergency situations like hostage-takings, “were quickly formed in virtually every major city to fight the drug war... Today, the most common use of SWAT teams is to serve narcotics warrants, usually with forced, unannounced entry into the home.”¹³⁵ Militarization of law enforcement wasn’t restricted to SWAT teams, however; the 1981 Military Cooperation with Law Enforcement Act, (advocated by President Reagan), gave “local, state, and federal police access to military bases, intelligence, research, weaponry, and other equipment for drug interdiction.”¹³⁶

In addition to militarizing federal antidrug enforcement, The Drug War also empowered local law enforcement personnel to be more aggressive in using tactics such as “stop and frisk.” Supreme court cases such as *Terry v. Florida* and *Bostick v. Florida* created the legal precedent for police searches (without a warrant) for drugs and weapons, as long as the suspect gives their

¹³³ Alexander 48

¹³⁴ Alexander 49

¹³⁵ Alexander 73

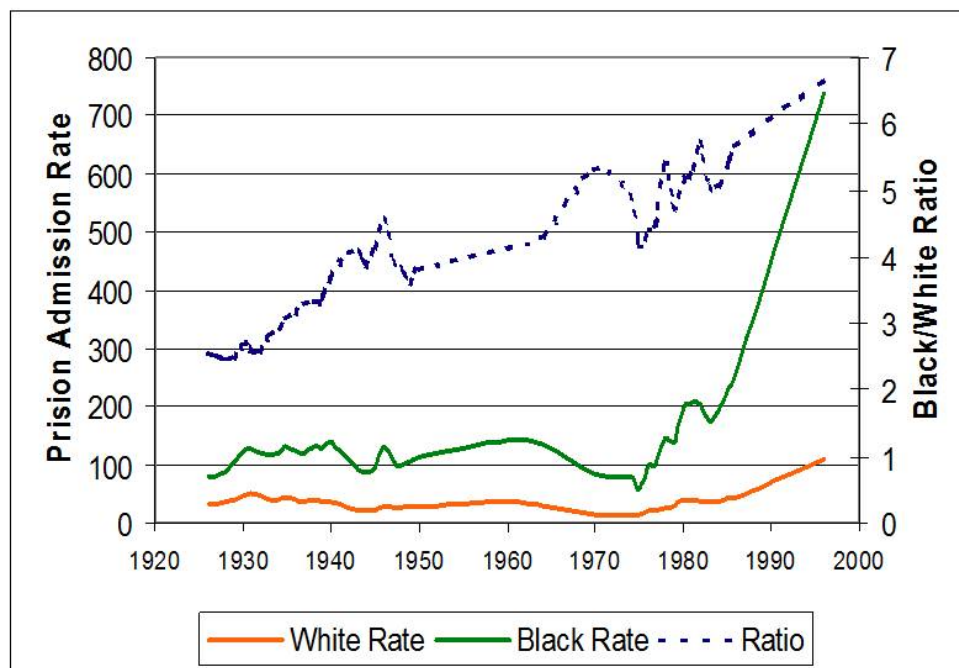
¹³⁶ Alexander 76

“consent” to be searched.

All a police officer has to do in order to conduct a baseless drug investigation is ask to speak with someone and then get their “consent” to be searched. So long as orders are phrased as a question, compliance is interpreted as consent. “May I speak to you?” thunders an officer. “Will you put your arms up and stand against the wall for a search?” Because almost no one refuses, drug sweeps on the sidewalk (and on buses and trains) are easy.¹³⁷

Due to increased federal funding for law enforcement and the increasing usage of ‘stop and frisk’ tactics, “the number of annual drug arrests more than tripled between 1980 and 2005.”¹³⁸ Reagan’s escalation of the Drug War was thus a major factor that contributed to the skyrocketing number of (especially black) people in United States prisons.

Racial Disproportionality in American Incarceration Rates, 1920-2000



Source: thesocietypages.org

As the chart above shows, skyrocketing incarceration rates of African Americans didn’t stop with the end Reagan’s presidency. In the 1988 presidential election, George H.W. Bush

¹³⁷ Alexander 65-66

¹³⁸ Alexander 71

criticized Democratic candidate Dukakis for being soft on crime in the infamous “Willie Horton” advertisement. In it, an announcer recalls the story of Willie Horton, an African American man who raped a woman and killed a man while on a “weekend prison pass” from his life sentence for murder.¹³⁹ Since Dukakis supposedly supported weekend prison passes, Bush was able to spear him for being soft on crime. Bush won the election with 426 electoral votes and 53.4% of the popular vote.¹⁴⁰

Responding to the political precedent set by Reagan and Bush, Clinton vowed in the 1992 election that “he would never permit any Republican to be perceived as tougher on crime” than him.¹⁴¹ After flying home to Arkansas to oversee the execution of Ricky Ray Rector, Clinton said, “I can be nicked a lot, but no one can say I’m soft on crime.”¹⁴² During his presidency, Clinton advocated the “three strikes and you’re out law,” The ensuing federal crime bill “created dozens of new federal capital crimes, mandated life sentences for some three-time offenders, and authorized more than \$16 billion for state prison grants and expansion of state and local police forces.”¹⁴³ These policies resulted in “the largest increases in federal and state prison inmates of any president in American history.”¹⁴⁴ Although it was Nixon’s racially coded discourse that transformed the political landscape on crime, and it was Reagan who really kick-started the Drug War in earnest, it was actually the Clinton administration whose policies did the most to spur mass incarceration. Like neoliberalism, “tough on crime” is a dominant political discourse that transcends party lines.

In 2010, “state and federal correctional authorities had jurisdiction over 1,612,395 prisoners,”¹⁴⁵ up from 474,368 in 1980.¹⁴⁶ Today, if the prison system were a city, it would be the

¹³⁹ “Willie Horton 1988 Attack Ad.” <<http://www.youtube.com/watch?v=lo9KMSSEZ0Y>>

¹⁴⁰ “1988 Presidential General Election Data - National.” <<http://uselectionatlas.org/>>

¹⁴¹ Alexander 55

¹⁴² *ibid*

¹⁴³ *ibid*

¹⁴⁴ *ibid*

¹⁴⁵ Guerino et al. *Prisoners in 2010*. BJS, 2012.

¹⁴⁶ Justice Policy Institute, *The Punishing Decade*. 2000.

fifth largest in the United States, after New York, Los Angeles, Chicago, and Houston. And the War on Drugs was the biggest single contributor to the explosion in prison population: “Drug offenses alone account for two-thirds of the rise in the federal inmate population and more than a half of the rise in state prisoners between 1985 and 2000. Approximately half a million people are in prison or jail for a drug offense today, compared to an estimated 41,100 in 1980—an increase of 1,100 percent.”¹⁴⁷

This is how the penitentiary became the dominant system of ethnoracial enclosure in America. Even if mass incarceration is some sort of “functional substitute” for the ghetto, Jim Crow, or slavery (as Wacquant and Alexander argue), it’s important to recount the political actors and the means they used to create mass incarceration; otherwise, the functionalist argument makes it seem like it was bound to happen. The next section examines an obvious example of how mass incarceration and neoliberalism are connected: privatization of prisons.

Private Prisons

The privatization of public services is a central tenet of the neoliberal agenda, and prisons are no exception to that rule. Private prisons were outlawed for 50 years until 1984, and they have shot up in popularity and usage since then. In 2010, 128,195 prisoners, or 8% of the total U.S. prison population, were held in private prisons--up from 87,369 in 2000.¹⁴⁸ In line with neoliberal ideology, proponents of private prisons typically boast of the public savings associated with the “more efficient” private enterprise, as opposed to the “inefficient bureaucracy” of public enterprise. However, the “efficiency” argument doesn’t take into account the fact that private prison operators have to create profits for their shareholders by charging their customer (the government) more than

¹⁴⁷ Alexander 58

¹⁴⁸ Guerino et al 2012.

the cost of the product they are offering (the prison). What results is a drive to reduce costs; this has disturbing consequences on the ground in private prisons. “Private prisons make money by cutting corners, which means skimping on food, staffing, medicine, education, and other services for convicts. It also means fielding poorly trained, ill-equipped, non-unionized, and often brutal guards.”¹⁴⁹ Because of this, “private prisons have become known for their lack of services, brutality, frequent escapes, and inmate violence.”¹⁵⁰ In addition, evidence counters the ideology that private prisons are cheaper for the taxpayer: most studies find that public versus private ownership has a negligible effect on cost.¹⁵¹

The biggest players in the private incarceration industry are the Corrections Corporation of America (CCA) and Geo Group (formerly known as Wackenhut Corrections). CCA and Wackenhut stocks soared in the mid 1990’s as one investment firm dubbed CCA the “theme stock of the nineties.”¹⁵² The party lasted until the bubble burst in the new millennium, when CCA’s stock “lost 93% of its value in 2000, and its accountants reported a fourth-quarter loss of more than a third of a billion dollars.”¹⁵³ The federal government effectively bailed CCA out by contracting with them for construction and operation of prisons for undocumented immigrants on their way to deportation.¹⁵⁴ At this point in 2000, CCA had outstanding debt of nearly \$1 billion, and these federal contracts were worth about \$760 million over ten years; the company’s CEO “frankly admitted that CCA would have been forced into bankruptcy” without these federal contracts.¹⁵⁵

Neoliberal governments continue to support and prop up private prison companies because privatization of public services fits into the neoliberal paradigm of limited government and free

¹⁴⁹ Parenti 220-1

¹⁵⁰ Parenti 222

¹⁵¹ Parenti 220

¹⁵² Parenti 218

¹⁵³ Greene 141

¹⁵⁴ Greene 144

¹⁵⁵ *ibid*

markets. Privatizing prisons a way that neoliberal discourse--and the politicians who tout it--reconcile the astronomical public costs of mass incarceration with their rhetoric on limited government. It doesn't matter that evidence counters the assumption that markets are more efficient in prison operation; privatization is a rhetorical ruse that provides discursive cohesion to the contradictory policy programs of mass incarceration and limited government. The other way that neoliberals straddle this contradiction is through the spectacle of prison labor. Materially, prison labor does shift some of the costs of mass incarceration onto the incarcerated. But more importantly, the image of prison labor creates the illusion that convicts are paying for their incarceration--and for their crimes.

Forms of Unfree Labor

Federal Prison Industries Becomes UNICOR

In 1977, Federal Prison Industries changed its "trade name" to UNICOR. The cosmetic change reflected a deeper institutional pivot in progress since the early 1970's: as Fordism phased into neoliberalism, FPI transitioned from a labor-intensive rehabilitation program to a competitive firm. Thus the shift in FPI's direction and purpose mirrored the wider institutional and discursive change resulting from the stagflation crisis of Fordism. Work became more "flexible," privatized, competitive, and exploitative. Less materially productive than earlier forms of unfree labor, prison labor's central role in neoliberal capitalism is as legitimating spectacle.

FPI's pivot included a new philosophy and new corporate strategies, both of which impacted the labor process of employed convicts. "Factories with Fences," FPI's self-published history, recounted this change in philosophy:

The Bureau shifted from the Medical Model to the Balanced Model of corrections. Rehabilitation was balanced against other correctional goals such as punishment, deterrence, and incapacitation. While rehabilitation ceased to be the primary objective,

FPI's work and education programs continued to play a critical role under the new philosophy.¹⁵⁶

It is remarkable that UNICOR admits that rehabilitation is no longer the chief goal of its inmate labor programs. This is not some radical critique of FPI--it's straight from the horse's mouth.

For federal prisons and UNICOR, the new "Balanced Model" was a return to the style and philosophy of the early Auburn penitentiary, which blended "hard, productive labor; harsh corporeal punishment; and the abridgement of the convicted offender's natural right, freedoms, and common law liberties."¹⁵⁷ There are important differences between the "Balanced Model" and the Auburn Model, however. Prisoners were unpaid in the Auburn penitentiary; although UNICOR didn't have to abide by minimum wage laws, it did pay its employees (often just cents per hour). Private companies contracted with Auburn for their labor needs, but UNICOR was and is a government-owned corporation. In addition, solitary confinement took the place of corporal punishment for in-prison punishment.

In addition to a philosophical shift at the level of the Bureau of Prisons, FPI itself changed its corporate strategy:

"The marketing initiatives of the mid-to-late 1970s laid the groundwork for the next three decades, as FPI intensified its focus on customer satisfaction, and aligned the organization based upon modern business principles. 1977 marked the beginning of FPI's new "identity." A new corporate logo and trade name — UNICOR — were introduced. In addition, a Corporate Marketing Office was created to develop nationwide marketing strategies and programs."¹⁵⁸

FPI's increased focus on marketing and customer satisfaction were an adaptation to increased market competition and decreased governmental demand as the War in Vietnam drew to a close.

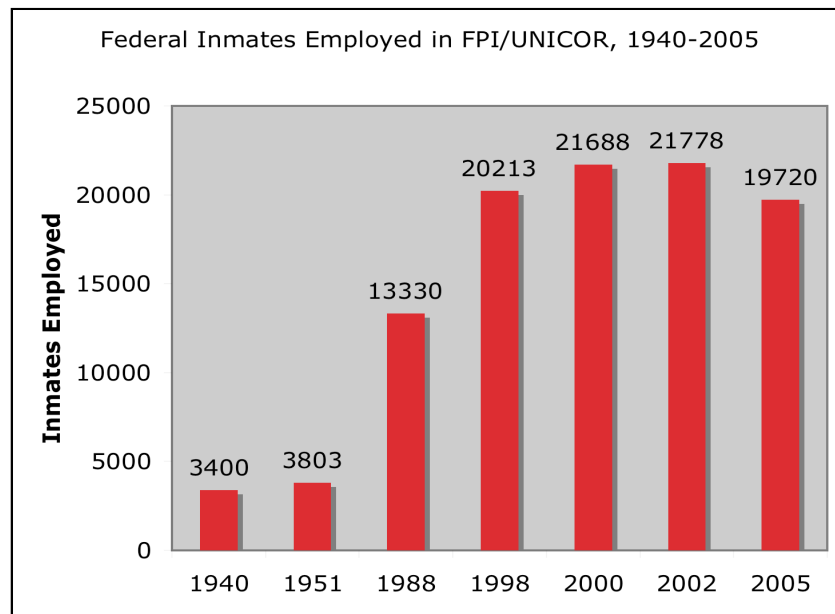
"Marketing" and "Customer Satisfaction" were also corporate buzzwords in general during the late 70's and 1980's, as firms tried to adapt to globalized, highly competitive markets in the developing

¹⁵⁶ Factories with Fences 24

¹⁵⁷ McLennan 53

¹⁵⁸ Factories with Fences 24

Post-Fordist political economy.



Source: UNICOR Annual Reports (FY1940, FY1951, FY1988, FY1998, FY2000, FY2002, FY2005)

The 1980s provided new opportunities and challenges for UNICOR, including the question of how to employ a larger portion of the growing federal prison population. “Surges in the Bureau’s inmate population occurred in the 1980s, due to increased prosecution for drug crimes, longer sentences, elimination of parole, and increased responsibility for housing aliens awaiting deportation.”¹⁵⁹ Since its mission statement says that it will employ as many convicts as possible, “FPI was driven to increase the number of inmates it employed and the number of factories it operated.”¹⁶⁰ In order to achieve this goal, “UNICOR adopted a more aggressive growth strategy in the 1980s, including a \$50 million expansion program to build and expand UNICOR facilities.”¹⁶¹

UNICOR grew with the federal prison system as mandatory minimum sentences for minor

¹⁵⁹ Factories with Fences 24

¹⁶⁰ *ibid*

¹⁶¹ Gale Group

drug offences drove mass incarceration.

In 1990 the population of federal prisons reached 47,331, compared with 24,252 inmates a decade earlier, and the numbers continued to swell. In 1995 the population grew to 89,964 federal inmates. Prison population was predicted to reach about 120,000 by 2004, and 28 additional federal prisons were slated to open by 2000, creating demand for additional UNICOR inmate jobs.¹⁶²

Mass incarceration in federal prisons prompted a quantitative change in UNICOR's operations that trailed by about a decade the qualitative change from rehabilitation to punishment. In sum, a combination of micro-institutional changes prompted by the macro-institutional advents of mass incarceration and neoliberalism, transformed FPI from a small government program that made furniture and war equipment to a company that, in 1999, operated 99 factories in 64 prisons in 30 states and employed more than 20,000 worker inmates (25 percent of eligible prisoners), with sales of \$566.2 million and net income of \$16.6 million.¹⁶³

UNICOR in the new Millennium

Like other wars before it, the Second Iraq War provided UNICOR with a glut of military orders. Federal prisoners manufactured

guided missile systems, [...] complex components for McDonnell Douglas/Boeing's F-15 fighter aircraft, the General Dynamics/Lockheed Martin F-16, and Bell/Textron's Cobra helicopter, [...] night-vision goggles, body armor, camouflage uniforms, radio and communication devices, and lighting systems and components for 30-mm to 300-mm battleship anti-aircraft guns, along with land mine sweepers and electro-optical equipment for the BAE Systems Bradley Fighting Vehicle's laser rangefinder.¹⁶⁴

Ironically, since federal prisons house, among other offenders, "terrorists" and people charged with treason-like offences, these people were eligible to work in UNICOR to manufacture equipment for American soldiers fighting in the "Global War on Terrorism."

¹⁶² *ibid*

¹⁶³ *ibid*

¹⁶⁴ Flounders. "The Pentagon & Slave Labor in U.S. Prisons." [Workers' World](#). Jun 6, 2011

The 2008 recession caused UNICOR to contract its operations, including “downsizing and consolidation of several operations, and the closure of several FPI factories.”¹⁶⁵ And as American combat operations in the Middle East slowed during the Obama administration, “UNICOR began positioning itself for a post-war environment, by pursuing commercial services that would otherwise be performed outside the United States.”¹⁶⁶ The 2009 UNICOR history continued, “We believe that repatriating work currently performed outside the U.S. presents a potential growth opportunity for UNICOR.”¹⁶⁷

The drawdown of the Iraq war and the 2008 recession prompted UNICOR to expand into frequently outsourced sectors like the call center industry. A 2012 MSNBC Article reported that “inmates provide private call center service, including data review and sales lead generation, for ‘some of the top companies in America’ under a federal mandate to help companies repatriate jobs they have outsourced overseas”¹⁶⁸ A promotional video on UNICOR’s website claims, “outsourcing with UNICOR can provide you with all the advantages of domestic contact centers at offshore prices[...] Imagine: all the benefits of domestic outsourcing at offshore pricing. UNICOR Services Business Group: your first choice in outsourcing.”¹⁶⁹

UNICOR’s focus on call centers and outsourcing is an example of how the corporation has adjusted to globalized, neoliberal capitalism. It’s also an example of how UNICOR fits into and perpetuates global neoliberalism, as federal prisons have become islands of third-world labor, in terms of workers’ low pay and the lack of collective representation or protective labor legislation. Again, despite the neoliberal tenets of free markets and limited government, a government

¹⁶⁵ “FPI Annual Report,” 2009. P3

¹⁶⁶ Factories with Fences 29

¹⁶⁷ Factories with Fences 29

¹⁶⁸ NBC News. “Inside the Secret Industry of Inmate-Staffed Call Centers.” 1/12/2012.

<http://usnews.nbcnews.com/_news/2012/01/12/10140493-inside-the-secret-industry-of-inmate-staffed-call-centers?lite>

¹⁶⁹ UNICOR Online. <http://www.unicor.gov/services/contact_helpdesk/index.cfm>

corporation is leading the neoliberal charge.

PIECP and State Programs

In 2010, state penitentiaries held 1,402,624 inmates--far more than the 209,771 held in federal prisons.¹⁷⁰ Since UNICOR only operates in federal prisons, various states have prison labor programs in their state facilities. Instead of focusing on particular states or particular state-sponsored prison industries, this section reviews major (federal) legislative developments that have changed how states can manage their prison industries, and the political actors who helped push the law towards privatization and deregulation of prison labor.

In 1929, responding to critics from both organized labor and organized business, Congress passed the Hawes-Cooper Act, which was “the first comprehensive federal law to limit states’ use of prison labor. This allowed states to protect their industries from competition from imports of another state’s prison labor-made products.”¹⁷¹ The Act stated that, “all goods [...] manufactured [...] wholly or in part, by convicts [...] transported into any State [...] and remaining therein [shall be] subject to the operation and effect of the laws of such State.”¹⁷² The Ashurst-Sumners Acts of 1935 and 1940 “criminalized the interstate transportation and sale of inmate-made goods” and “also limited the use of prison labor-made goods within states.”¹⁷³ So by 1940, states were not *prohibited* from instituting prison industries, but the strict federal regulations made doing so virtually prohibitive. The only significant prison labor program during this period was FPI.

These conditions persisted more or less unchanged until Congress passed the Prison

¹⁷⁰ Guerino et al 2012.

¹⁷¹ Kang, Susan. “Forcing Prison Labor: International Labor Standards, Human Rights and the Privatization of Prison Labor in the Contemporary United States.” *New Political Science*, Volume 31, Number 2, June 2009. P151

¹⁷² Hawes-Cooper Act. Public records

¹⁷³ Kang 152

Industry Enhancement Certification Program (PIECP) as a part of the Justice System Improvement Act of 1979. PIECP allowed states to set up prison industries that would be exempted from the regulations of the Ashurst-Sumners Act of 1940, and it created a PIE certification board that would review prison industries' compliance with rules such as:

- (1) "Prevailing wages," paid to prisoners, although deductions could be taken for room and board, victim restitution, and family support (with at least 20% reserved for the inmate); (2) the provision of the same benefits for prison workers under state/federal government (specifically workers' compensation); and (3) "voluntary" participation of prisoners and consent to pay deductions.¹⁷⁴

After 1979, states could create PIE certification programs that would allow private companies to set up shop in state prisons. Companies' and prisons' compliance with PIECP rules would be regularly assessed by the PIE Certification board.

In 2005, "37 states and four county-based programs were certified by PIECP, in partnership with 175 private sector businesses. Between 1979 and 2005, the PIECP was estimated to have collected \$33 million for victim restitution, \$21 million for family support, \$97 million toward the costs of incarceration, and \$46.6 million in federal and state taxes."¹⁷⁵ In the first quarter of 2012, only 4,675 inmates worked in PIECP work programs--about a quarter of the number of UNICOR employees.¹⁷⁶ At 1,033 employed, South Carolina employs the most inmates through PIECP; Florida, Kansas, and Minnesota all employ more than 500.¹⁷⁷

Agents in Prison Labor Privatization

The American Legislative Exchange Council (ALEC), a right-wing think tank and political action group, drafted model legislation and lobbied for PIECP in multiple states.¹⁷⁸ Propped up by

¹⁷⁴ Kang 152

¹⁷⁵ *ibid*

¹⁷⁶ PIECP Certification and Cost Accounting Center Listing. March 2012

¹⁷⁷ *ibid*

¹⁷⁸ "New Exposé Tracks ALEC-Private Prison Industry Effort to Replace Unionized Workers with Prison

donations from big business, ALEC lobbies for pro-market legislation; it is one of many channels through which the capitalist class translate their class interests into political action. In addition to lobbying for prison labor programs like PIECP, ALEC has lobbied for prison privatization, privatization of UNICOR, and measures to increase the number of incarcerated, such as, mandatory minimum sentences for minor drug offences, barriers to community-based justice programs and other alternatives to standard prisons, and increasing prosecution of juveniles as if they were adults.¹⁷⁹ Another example of ALEC's pro-market, pro-incarceration agenda was the 1995 Prison Industries Act (PIA), which failed to pass. PIA would have decreased the regulation authority of PIE boards, by allowing "a third-party company to set up a local address in a state that makes prison goods, buy goods from a prison factory, sell those products locally or surreptitiously ship them across state borders."¹⁸⁰

Another player in privatizing prison labor in the states is the National Correctional Industries Association, "an international nonprofit professional association whose members represent all 50 state correctional industry agencies, Federal Prison Industries, foreign correctional industry agencies and city/county jail industry programs, [and] Private sector companies that work in partnership with correctional industries both as suppliers/vendors and as partners in apprenticeship and work programs."¹⁸¹ So NCIA is the organization for companies that benefit from privatized prison labor, and it helps states and private companies coordinate PIECP programs.

"By 1995, oversight of the PIE program had been effectively squashed, transferred from the Department of Justice's Bureau of Justice Assistance to the National Correctional Industries Association (NCIA)."¹⁸² In an illustration of Marx's instrumental theory of the state, today, the

Labor." Democracy Now. 8/5/2011.

<http://www.democracynow.org/2011/8/5/new_expos_tracks_alec_private_prison>

¹⁷⁹ "ALEC Exposed." Center for Media and Democracy. <<http://www.alecexposed.org/>>

¹⁸⁰ Elk and Sloan. "The Hidden History of ALEC and Prison Labor." The Nation. 8/1/2011.

¹⁸¹ NCIA website. <http://www.nationalcia.org/>. Accessed 4/25/2013.

¹⁸² Elk and Sloan

organization that regulates compliance with PIECP guidelines is the same professional organization for the corporations who benefit from exploiting prison labor!

Inmate Labor in Private Prisons

Private prisons use inmate labor to cut the costs of the enterprise and maximize profits. 17% percent of inmates in private prisons work in private prison industries and 57% do maintenance labor for the private prison.¹⁸³ Private prison companies pay their inmate maintenance workers even less than public prisons do.¹⁸⁴ In addition, “PIECP provisions, as well as the Fair Labor Standards Act, do not apply to prison labor in private prisons.”¹⁸⁵ Private prisons are exempt from these already weak (and weakly enforced) regulations. Since “the authority over daily operations of these [private] prisons is delegated to private managers,” and since “work assignments in privately run prisons may be manipulated to increase profits,” Kang argues that inmate labor in American private prisons violates international labor laws, like ILO Convention 29, the 1930 convention that outlaws forced labor.¹⁸⁶

Military Use of Forced Prison Labor: The Civilian Inmate Labor Program

This recent and little-known form of unfree labor is shrouded in mystery because most of the information about it is classified. An unclassified 2005 Army publication entitled “Civilian Inmate Labor Program” outlines the conditions for the federal government to set up prison labor camps on old military bases. Minimum security federal prisoners could work off-site at the bases or live and work in the prison labor camps. Inmates would labor for the Department of Defense without pay. According to the document,

¹⁸³ Kang 154

¹⁸⁴ *ibid*

¹⁸⁵ Kang 155

¹⁸⁶ Kang 155-6

Civilian inmate labor programs benefit both the Army and corrections systems by (1) Providing a source of labor at no direct labor cost to Army installations to accomplish tasks that would not be possible otherwise due to the manning and funding constraints under which the Army operates. (2) Providing meaningful work for inmates and, in some cases, additional space to alleviate overcrowding in nearby corrections facilities. (3) Making cost-effective use of buildings and land not otherwise being used.¹⁸⁷

The document continues with a flow chart of how departments can legally set up these prison labor camps. Unfortunately, the scale of the Civilian Inmate Labor Program is hard to discern, since the documents that would reveal such figures remain classified.

Analysis: The Scale and Profitability of Contemporary Prison Labor

“The ineffectiveness of private prison labor in meeting its stated purposes demonstrates how this policy is primarily a populist political response, not actually a revenue-raising or rehabilitation program.” -Kang, Forcing Prison Labor, 150

First of all, to say that the use of prison labor has “increased” in neoliberal America is only half true. To clarify, for UNICOR at least, the number of inmate laborers has increased only in equal proportion to the number of inmates in federal prisons. So although the number of inmate workers in federal prisons has increased by about 7,000 since 1988, the percentage of federal prisoners employed has stayed in the range of 15-20%.¹⁸⁸ Down from its peak of 23,152 employees in 2007, in 2009, UNICOR employed 18,972 convicts (16% of eligible federal prisoners), in 98 factories at 71 different prisons, with wages ranging from 23 cents to \$1.15 per hour, and with corporate revenue of \$983,227.¹⁸⁹

Despite the buzz about the cost-cutting virtues of prison labor, UNICOR remains a relatively unproductive and unprofitable corporation that would not exist in a free market.

Even with wages as low as 21 cents an hour, UNICOR products are expensive, costing on average 13 percent more than the same goods provided by private firms. Those products

¹⁸⁷ Department of Defense. “Civilian Inmate Labor Program.” 2005.

¹⁸⁸ James, Nathan. “Federal Prison Industries.” CRS Report for Congress. 2007

¹⁸⁹ UNICO annual report. 2009.

are shoddy; one study found that wire supplied by UNICOR failed at twice the rate of other suppliers. Finally, UNICOR delivered its products late 42 percent of the time. Clearly, UNICOR would not be able to compete in an open market.¹⁹⁰

Rather than through the competitive advantage of cheap labor, UNICOR survives because of the mandatory source clause that forces the government to buy from UNICOR. Originally, as part of the negotiation with the AFL-CIO, UNICOR could only sell to the federal government, and the government had to buy from UNICOR. The first restriction was relaxed in 1998 and again in 2003, when FPI could “sell in the commercial market products which are currently imported from foreign countries and made with foreign labor” (e.g. call centers).¹⁹¹ But the government still has to buy from UNICOR, effectively propping up the corporation. As right-wing pro-market ideologues are quick to point out, UNICOR exists in an ultra-regulated quasi-market. ALEC-backed conservative politicians have repeatedly attempted to dismantle the mandatory source clause and liberalize the market in prison labor.

One of their victories was the legalization of privatized inmate labor in state prisons through PIECP. PIE certified programs exempt state and local corrections departments from normal restrictions on the sale of prisoner-made goods in interstate commerce: 1) employers don't have to pay benefits like retirement, health care, or life insurance 2) workers are not granted annual, sick, or family leave 3) security personnel from the prison (rather than managers on the firm's payroll) surveil the inmates at work.¹⁹² Despite all of these cost-cutting measures, and despite the global race to the bottom in labor costs in globalized neoliberal capitalism, PIECP programs only employed 4,675 in 2010.¹⁹³ Why don't more companies exploit prison labor?

McBride offers one answer: “prison labor is unattractive to most investors because they do

¹⁹⁰ McBride 135

¹⁹¹ Factories with Fences

¹⁹² Donald and Howard. “Prison Industries Enhancement.” Georgia Correctional Industries. 2007.

¹⁹³ PIECP Certification and Cost Accounting Center Listing. March 2012

not need the kind of labor that prisoners can supply.”¹⁹⁴ In addition to the managerial inefficiencies inherent to using convict labor (regulations, red tape etc.), limiting factors in private use of prison labor include skill mismatches, geographic mismatches, and the increasing prevalence of face-to-face service labor in low-wage industries. Thus it may be unproductive for a company to exploit prison labor, even at 20 cents an hour, if the company needs skilled labor or a face at a checkout line. The increased use of prison call centers is an interesting fix to the problem of geographical mismatch: the face-to-face customer service interaction is replaced with a form of customer service that is essentially place-less.

Political opposition is also a consideration for companies with retail products. Many such companies that use prison labor, such as Boeing, Victoria’s Secret, and Nintendo have been publicly criticized for it. Companies that are worried about their public image might refrain from using prison labor for that reason, especially if they can get labor for just as cheap in the developing world.

There are certainly corporations that profit from prison labor, including private prison companies, companies that operate PIECP programs, and companies that subcontract with the companies that operate PIECP programs. Nevertheless, prison labor has not emerged as a wildly profitable venture in and of itself; it requires supplementation by other forms of labor and capital in the interconnected global economy.

In sum, it seems that the main *quantitative* shift constitutive of neoliberal penalty has been mass incarceration; however, prison labor has undergone important *qualitative* changes--such as privatization, deregulation, and a shift away from its rehabilitative focus--that make up an important part of the anatomy of the neoliberal-penal state. In contrast to slavery, convict leasing, and sharecropping, contemporary prison labor does not constitute a significant regime of accumulation

¹⁹⁴ McBride 157

on its own.

If contemporary prison labor is generally unprofitable, why does it persist under neoliberal capitalism? Using the model of accumulation and legitimation, deductive logic suggests that it must serve legitimating purposes for the neoliberal capitalist state. However, relying on this deduction puts unwarranted stress on this functionalist model of capitalism. The next two sections develop the argument positively: contemporary prison labor legitimates the neoliberal-penal state through its reinforcement of the ethic of labor discipline. Prison labor is a spectacle; as such, it need not be profitable.

Case in Point: Sheriff Arpaio's Chain Gangs

Joe Arpaio is the sheriff of Maricopa County, Arizona, which includes Phoenix and has a population of nearly four million. In 1993, after voters declined to finance the construction of a new jail, Arpaio “procured a consignment of Army-surplus tents and had them set up, surrounded by barbed wire, in an industrial area in southwest Phoenix. ‘I put them up next to the dump, the dog pound, the waste-disposal plant,’” Arpaio said.¹⁹⁵ As the sheriff's office continued to crack down on undocumented immigration, the tent city swelled: “Arpaio put up more tents, until Tent City jail held twenty-five hundred inmates, and he stuck a neon “Vacancy” sign on a tall guard tower.”¹⁹⁶

Arpaio would later describe this tent city as a “concentration camp.”¹⁹⁷ Temperatures at the tent city can rise to as high as 135 degrees Fahrenheit, and that's outside of the tents.¹⁹⁸ Arpaio

¹⁹⁵ Finnegan, William. “Sheriff Joe.” *The New Yorker* July 20, 2009.

¹⁹⁶ *ibid*

¹⁹⁷ In *Two Americans*, a film about Arpaio and a first generation immigrant from Mexico. Dir. Daniel Devivo and Valeria Fernandez.

¹⁹⁸ Finnegan

banned cigarettes, pornography, movies, coffee, hot lunches—even salt and pepper.¹⁹⁹ In an effort to emasculate and humiliate the male inmates, he gave them pink underwear. What’s more, inmates wear chains and work in chain gangs:

He put his inmates in black-and-white striped uniforms...The chain gangs’ tasks include burying the indigent at the county cemetery, but mainly they serve as spectacles in Arpaio’s theatre of cruelty. “I put them out there on the main streets,” he told me. “So everybody sees them out there cleaning up trash, and parents say to their kids, ‘Look, that’s where you’re going if you’re not good.’”²⁰⁰

Although liberal and civil-liberties groups around the country have repeatedly protested the tent city, Arpaio remains a celebrated politician in Maricopa County: “the tents were a hit with the public, or at least with the conservative majority that voted.”²⁰¹ Like Nixon in the 1970s, Arpaio has found a way to tap into white racist fears for political gain. The spectacle of deprivation and labor-as-punishment is popular among the conservative, racist majority voters of Maricopa County. Arpaio said it best: “I can get elected on pink underwear.”²⁰² For Arpaio, chain gang labor is in the same genre as giving inmates pink underwear or banning salt and pepper—it’s not about profit, but about spectacle.

The Spectacle of Contemporary Prison Labor

Keally McBride compares prison labor today to convict leasing during reconstruction, showing that convict leasing was productive but prison labor today is usually unprofitable.²⁰³ She argues that contemporary prison labor is about reinforcing the connection of labor to citizenship in the American political zeitgeist:

The ideology of work and citizenship in the United States dictates that all rational and disciplined people can and will choose to work. Not being able to work is a reality that our

¹⁹⁹ *ibid*

²⁰⁰ *ibid*

²⁰¹ *ibid*

²⁰² Interview, June 12, 2009. http://www.youtube.com/watch?v=p9vz0M_Rwo0

²⁰³ McBride 135

understanding of citizenship, virtue, choice, and freedom simply cannot accommodate, particularly in an era of increased market discipline. To acknowledge that some people cannot work would require a fundamental shift away from neoliberalism.²⁰⁴

Under neoliberalism, prison labor is useful more as a legitimation tool than as an accumulation device. It is more like labor in the poorhouse--which reconciled contradictory bourgeois motives of compassion and discipline--than convict leasing, which was an accumulation tool. Wacquant echoes McBride: "penitentiary employment has the ideological virtue of extending the civic obligation to work to those among impoverished Americans who are the most recalcitrant to the new hegemonic regime of desocialized wage labor."²⁰⁵ This argument is more Durkheimian or Foucauldian than Marxian. Wacquant recalls, "Emile Durkheim taught us that punishment is a communicative device, a 'language' delivering messages not so much to offenders as to the witnessing public--in this case the working citizenry."²⁰⁶

Foucault's theory of primitive (rather than liberal) punishment can be used to explain this symbolic function of prison labor:

The role of the criminal in punishment was to reintroduce, in the face of crime and the criminal code, the real presence of the signified--that is to say, with the penalty which, according to the terms of the code, must be infallibly associated with the offence... Individual correction must, therefore, assure the process of redefining the individual as subject of law, through the reinforcement of the systems of signs and representations that they circulate."²⁰⁷

By this logic, labor-as-punishment reinforces the hegemonic cultural value of labor; in other words, the spectacle of prison labor is useful for capital mostly insofar as it reinforces labor discipline outside of the prison. The propagated image of the laboring convict is more important for the stability of neoliberal capitalism than the actual surplus labor value that capitalists or the state extract from laboring convicts.

²⁰⁴ McBride 142

²⁰⁵ Wacquant. Punishing the Poor. 183

²⁰⁶ Wacquant 108

²⁰⁷ Foucault. Discipline and Punish. Vintage, 1995. P128

Conclusion

“Hegel remarks somewhere that all great world-historic facts and personages appear, so to speak, twice. He forgot to add: the first time as tragedy, the second time as farce.” - Marx, Eighteenth Brumaire of Louis Bonaparte

This paper began with a problem: unfree labor is not supposed to exist in advanced capitalism because it is less productive than free labor, yet the neoliberal period has witnessed the return of unfree labor. Besides prison labor, other forms of semi-coerced labor have also blossomed under American neoliberalism,²⁰⁸ the most notable of which is workfare. For Wacquant, workfare and mass incarceration are linked in the neoliberal-penal political project:

“The primary clients of the assistential and carceral wings of the neoliberal state are essentially the two gender sides of the same population coin drawn from the marginalized fractions of the postindustrial working class. The state regulates the troublesome behaviors of these women (and their children) through workfare and those of the men in their lives through criminal justice supervision.”²⁰⁹

Mass incarceration and workfare are part of the same political project of legitimation of the neoliberal capitalist state. In O’Connor’s sense of legitimation, both programs provide for the material subsistence and political control of the people worst-affected by the shift from Fordism to flexible accumulation.²¹⁰ In Habermas’s sense of legitimation, both programs rely on and reproduce racism as a self-explanatory rationale for why African Americans should be controlled and “reformed” to share the civic obligation to work, which in turn complements the entrenched American discourse on individualism and meritocracy.

Wacquant calls workfare “an attempt to (re)sacralize labor and elevate it to the rank of absolute civic duty--as in the slogan, posted on the walls of countless welfare offices, “All Jobs

²⁰⁸ Such as coercive immigrant worker programs and community service sentencing.

²⁰⁹ *Punishing the Poor* 99

²¹⁰ Incarceration does this by literally warehousing and feeding poor black men, and workfare does this by forcing poor black women to work in low-end jobs.

Are Good Jobs.’’²¹¹ In the same vein, prison labor under neoliberalism is an attempt to reinforce this civic duty to work.

We want prisoners to labor, but we don’t want them to compete. Hence, we have the development of *spectacularly* unproductive labor[...] The myopic view that all rational people will choose to labor at a time when structural unemployment is becoming a permanent reality is creating the need for farce.²¹²

This is why prison labor persists even as it is generally unproductive compared to free labor: it is part of the neoliberal-penal legitimation project. Contemporary prison labor is a spectacle that reinforces the norm that everyone has to work, which is paramount to retaining order in an era with high structural unemployment. And the return of unfree labor is at its most “farcical” in cases like Joe Arpaio’s Maricopa County, where chain gangs walk in striped uniforms down roads that might have been graded by “real” chain gangs a century ago.²¹³ Productive cruelty has turned into disciplinary theater.

The spectacle of prison labor imperfectly resolves problematics of the neoliberal-penal state. Materially, it shifts costs of incarceration to the incarcerated, which mitigates the political problem of paying for mass incarceration. Discursively, inserting markets into prisons is an attempt to put the wolf of the carceral state--which is by nature coercive, expensive, and “big government”--in the sheep’s clothing of “free markets,” “limited government,” and “personal responsibility.” The fact that prison labor is inefficient is beside the point: it is about appearances rather than substance.

This is the key to dissolving the problem posed by Marx, that unfree labor should diminish under capitalism *because it’s less productive* than free labor. Marx’s argument remains airtight; the problem is with his assumption that capitalists will always pursue more and more productive labor.

²¹¹ *Punishing the Poor* 101

²¹² McBride 144-5. Emphasis added

²¹³ It should be noted that it probably isn’t funny for those who have to work in Arpaio’s chain gangs. It is, however, a “farce” compared to chattel slavery.

On the contrary, capital--and the state--will promote unproductive labor, such as prison labor and workfare, if it stabilizes the legitimacy of the status quo, whether materially or discursively. The case of the neoliberal-penal state suggests that capitalism creates a surplus population that is unproductive for capital to exploit,²¹⁴ and that unfree labor by the surplus population is a legitimation tool that stabilizes an unstable system, rather than an accumulation tool in its own right.

The argument here is *not* the opposite of Marx's: I am not claiming that unfree labor and capitalism are synonymous in the same way that Marx or Friedman claim that capitalism and free labor are. Rather, unfree labor does not disappear due to capitalist development: it persists, sometimes in the shadows, sometimes in the light. Likewise, Foucault's primitive (symbolic) punishment persists even as liberal punishment becomes the norm. Punishment retains its symbolism as the image of the punished--linked with the crime itself--plays into "liberal" self-policing and panoptic regulation of the public.

Theoretically, this paper refutes the empirical validity of ideal-typical conceptions of both capitalism and liberal punishment, whether they come from the left or the right. Marx and Friedman both rely on capitalism as an ideal type. Although this is useful in distinguishing it from feudalism or socialism, this simplification obscures "exceptions" which are actually fundamental to the system. An example is unfree labor: a mode of production usually thought of as confined to feudalism, it persists under capitalism, serving accumulation and legitimation imperatives in different eras of American capitalist history.

Practically, these realizations should serve to challenge absolutist notions of "progress." Under the banner of freedom, nearly two million people sit in American prisons today, and a growing minority of them work for less than a dollar an hour just to make that contradiction less

²¹⁴ Or "Reserve Army," as Marx wrote in Capital Vol. 1, Chapter 25, Section 3.

painful for politicians and the American electorate. No, this is not slavery--but those who pretend it's the land of the free should be ashamed.